

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

DRAFT

IN RE:) Case No. 01-MDL-00875
ASBESTOS PRODUCTS)
LIABILITY LITIGATION) Philadelphia, PA
) July 13, 2012
) 9:40 a.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE DAVID R. STRAWBRIDGE
UNITED STATES MAGISTRATE JUDGE

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Proceedings recorded by electronic sound recording, transcript
 produced by transcription service.

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1 (The following was heard in open court at 9:40 a.m.)

2 THE COURT: As you folks know, we have a heat
 3 problem here. So I've addressed it. And I encourage you to
 4 do the same. As my clerk said, we have an awful lot of suits
 5 here today, and more than I anticipated. It sounds like folks
 6 didn't respond to the request to send an email in telling us
 7 if you were going to appear. But nonetheless, here we are.

8 UNIDENTIFIED COUNSEL: Some did.

9 THE COURT: I welcome you all to -- right, some did.
 10 I welcome you all to Philadelphia. Please be seated. I have
 11 some interns coming in. You guys don't mind sitting down,
 12 just move the one over. There's four of them. They can sit
 13 there, that would be great.

14 All right. So Mr. Spinelli?

15 MR. SPINELLI: Judge, how are you.

16 MS. STUDEBAKER: Studebaker.

17 THE COURT: Have I met you before?

18 MS. STUDEBAKER: Yes, sir.

19 THE COURT: I'm sorry.

20 MS. CHENEVERT: Ms. Chenevert.

21 THE COURT: I'm sure that I've met you before, have
 22 I?

23 MS. CHENEVERT: No.

24 THE COURT: Okay. Mr. Setter, Mr. Lauth.

25 MR. FONSTAD: John Fonstad.

Colloquy

1 THE COURT: You're John Fonstad. I'm sorry I'm
 2 going to have trouble here. Mr. Cascino I certainly remember.
 3 Mr. Mulholland I remember.

4 MR. MULHOLLAND: Good morning, Judge.

5 THE COURT: Mr. Mulholland I need to tell you that
 6 when you came up on the elevator today, you brought a rise in
 7 the heart of one of my interns, who is a resident of Little
 8 Rock, Arkansas. And he was so pleased to hear a southern
 9 accent that he came in with a smile on his face.

10 MR. MULHOLLAND: There you go.

11 MR. MCCOY: Judge, I wanted to ask one thing here.
 12 We have Dan Harris here who is an advisor to our firm. And he
 13 hasn't actually appeared in the case because he's really just
 14 an advisor to our firm. I was wondering, he's not speaking
 15 but I wonder if he could sit by me --

16 THE COURT: I don't have a problem with that.

17 MR. MCCOY: Okay. Thank you.

18 THE COURT: And I think that the general proposition
 19 is to the extent that there's going to be input and
 20 appearance, you know as you know we need an entered appearance
 21 and we need the pro hac vice issues to be dealt with. But
 22 otherwise I'm happy to have him. Good morning, sir.

23 Okay. I'm going to tell you what we have done. And
 24 to try to give this -- let me just sort of lay out what I'm
 25 hoping that we can accomplish today.

Colloquy

1 And I was asked yesterday by Mr. Lauth, I think,
 2 somebody, about how long we expected to be here, and that's
 3 going to depend largely based upon you and how efficient you
 4 make use of this time.

5 But my hope and expectation is, given that it's a
 6 Friday afternoon in the summer, that I can get you out of
 7 here, you know, 3:00-ish, or something like that. I suspect
 8 maybe you made arrangements for 5:00, 6:00 flights, most of
 9 you, back to the Midwest or wherever you're going.

10 That's kind of what I'm hoping to be able to
 11 accomplish. We, in the order of things, as we went through it
 12 -- I like to work off of these big sheets, it helps me
 13 organize stuff.

14 And I did that. And I, at the risk of -- at the
 15 risk of putting something on there that one might deem to be
 16 sort of preliminary judicial inclinations about things, which
 17 I don't think I did much of, but I tried to state what I
 18 understood the issues, and to delineate a little bit, just to
 19 help me in terms of the structure of our thinking and the
 20 structure of the issues, the impact and implications of the
 21 previous rulings. You know, the need obviously for some
 22 consistency with respect to the previous rulings that we've
 23 had, or the application of the previous rulings to the current
 24 problems.

25 And, you know, trying to recognize a little bit

1 about the history of from whence we have come. I did -- I did
 2 think, however, that the way to approach this was, for me,
 3 was, we've been doing a number of things now with respect to
 4 some evidentiary rulings on some issues that obviously have
 5 application to those particular cases, but in my view, the
 6 clear message -- the clear intended message, in my view, is
 7 that it ought to have application beyond those specific cases
 8 and principles that are set out by virtue of some of those
 9 rulings would need to apply.

10 And I think you would expect and should expect that,
 11 you know, right or wrong, they will apply as cases go forward.
 12 The -- there have been some reaction to some things I know
 13 from the plaintiff's perspective that we have a very
 14 aggressive schedule. I appreciate that. From the defendants'
 15 perspective, it's not an overly aggressive schedule, given the
 16 overall history with respect to those cases. Including going
 17 back to the time when Judge Reed was involved, and there was
 18 meant to have been a lot of work done on these underlying
 19 cases, anticipating that they were going to be resolved in the
 20 MDL all during those mediation process.

21 And, you know, at the risk of, you know, revisiting
 22 the history of all of that, that clearly has implications, in
 23 my judgment, with respect to the overall time related to, for
 24 folks to do things in terms of gaining knowledge of and
 25 gaining an understanding of the various issues that affect the

1 positions of their clients in particular cases.

2 So, as we are coming, frankly, to crunch time, as
 3 discovery deadlines have passed on the top 10, and 1 and 2 --
 4 2 and 3, 1 and 2 groups. The third one passed -- just passed.
 5 You know, and that's, as you know from previous motions that
 6 have been filed with respect to extensions of discovery, we
 7 are very unreceptive to further extensions of discovery
 8 deadlines.

9 But I did indicate, and I'm sure you detected when
 10 the question arose with respect to having another session and
 11 trying to look at some of these issues in a more global way,
 12 looking at it, in my judgment, from the perspective of going
 13 forward, not trying to recreate things that happened in the
 14 past, what's done is done, for better or for worse, but from
 15 the perspective of going forward, I am -- I was interested in
 16 the discussion with respect to trying to streamline things.

17 The notions that Mr. McCoy had mentioned and the
 18 CVLO folks had mentioned about coordinating discovery
 19 predicated upon sites, and according -- and dealing with the
 20 particular problems of the infirm -- more infirm witnesses, in
 21 extremis is a phrase that was used early on in connection with
 22 some of them. And as I've expressed numerous times, I'm
 23 sympathetic to all that.

24 And I think that there has been -- this is -- it's
 25 not as if these issues came up for the first time, by any

1 means. In fact, it's my recollection, of course you guys get
 2 -- order all these records, so hopefully my recollection is
 3 consistent with what I said, or what we articulated back at
 4 the time, that from my first involvement in the case, and Joel
 5 has more history back with Judge Reed, as you know, is that
 6 there was lots of discussion with you all with respect to the
 7 way in which we were going to organize these cases.

8 And I recall the site discovery issue was something
 9 that was discussed, and was on the table. And I clearly
 10 remember when I first got involved in the cases, looking at
 11 the question with respect to the most severely impaired first,
 12 and looking at the questions with respect to the living,
 13 severely impaired first. That was the genesis of what was the
 14 magic 50, that became 20, that became 10, that became 9, it
 15 became 8, and whatever it was.

16 That was why and how all that was done. To front
 17 load on those cases. You all would get some determinations
 18 with respect to rulings as those cases moved forward, and with
 19 the understanding of the implications of those rulings would
 20 have, that those rulings would have implications beyond the
 21 specifics of those particular cases.

22 So that's what I see with respect to the, you know,
 23 from where we came and how we got to where we are now. I've
 24 been disappointed, frankly, that there hasn't been more
 25 activity with respect to settlement. I understand some of the

1 positions of the parties with respect to settlement. And it
 2 was my hope and my expectation, and I'm naive enough to still
 3 maintain that hope, maybe still have some expectation, that as
 4 more rulings come through on 8012's and on summary judgment
 5 issues and on discovery issues, there will be some adjustments
 6 in the positions that parties are taking with respect to
 7 settlement.

8 I understand that defendants want to have the --
 9 some of the causation issues determined by virtue of rulings.
 10 That's been done, of course, as you know, on some, anyway.
 11 And you've probably seen, I'm sure you're paying very close
 12 attention to Judge Robreno's rulings, not just on CVLO, but on
 13 other cases throughout the country.

14 And I think you've probably got a pretty good sense,
 15 because he's issued a lot of rulings on a lot of cases that go
 16 to summary judgment questions.

17 There's some of these cases where summary judgment
 18 motions have been denied, there have been remand orders.
 19 There was a suggestion at some point that was wrong, because
 20 they were supposed to go back to me for purposes of "some
 21 certification" with respect to no possibility of discovery
 22 before it goes back.

23 That was under the Judge Reed regime. That's not
 24 part of our regime. What we're looking for is, if the parties
 25 want to have further settlement conferences, I would not in

1 any way try to discourage it. But if there have been motions
 2 for summary judgment denied, I would have thought -- we didn't
 3 get requests from what I recall on those few cases, part of
 4 CVLO, where motions for summary judgment were denied, to
 5 participate in settlement conferences, and we would make
 6 ourselves available, myself and some of the other Magistrate
 7 Judges who are not quite as busy in all this now, to work with
 8 you all with respect to settlement conferences on those cases
 9 where motion for summary judgment have been denied.

10 I hope that's something that could still be done.
 11 Because we still see that our mantra is to exhaust all those
 12 possibilities before they get back to the transfer of courts.

13 Not to say it couldn't continue on in the transfer
 14 of courts. That's going to be up to those particular judges.
 15 But we want to take advantage of whatever expertise, which you
 16 may or may not accept, on your position on particular issues
 17 that we have tried to gain as a result of working with these
 18 things, so that we can be useful in terms of helping to
 19 facilitate settlement.

20 So we'll see, and that's still -- that's still out
 21 there for everyone to try to jump onto. Okay. So that's the
 22 where all this is, and how I now see things. I thought that,
 23 looking at the agenda, which principally Joel was responsible
 24 for. We spent time together on it with Lauren, obviously, to
 25 try to work it up, based upon the consideration of the -- what

1 we -- I personally reject it as a universal concept that needs
 2 to be applied in all cases.

3 It depends to me upon what it is that is the basis
 4 for the order, and what it is that -- what we believe the
 5 impact of the order would have upon -- upon the overall
 6 progression of the case.

7 I mean, as an example, and I know one of the issues
 8 that we ruled upon that my guess is we probably satisfied in
 9 making both sides unhappy, which means it's a good thing for a
 10 Judge to do, with respect to the transcripts, electronic
 11 transcripts that we order that needed to be produced in a
 12 sequencing kind of way.

13 When those transcripts get prepared, my instinct is,
 14 as I hear about this, and there will be -- you guys are still
 15 briefing some aspects of this, is that that probably would not
 16 generate a need for any further discovery. Because the
 17 question would be, if they are electronic transcripts and
 18 those transcripts are of such a nature that they could be
 19 utilized in a further proceeding, then they will be there to
 20 be utilized in a further proceeding.

21 If they can be sufficiently linked up to show that
 22 the evidence from that transcript would relate to a present
 23 case, then it would seem to me, and I think it's probably a
 24 trial judge decision, but it would seem to me that the
 25 evidence from that deposition, assuming the party who was

1 you folks had suggested to us. I thought that the 1-B issues,
 2 the consolidation questions were what I thought were really
 3 more the heart of why it was that we wanted to have this
 4 conference in the beginning.

5 I didn't feel that I needed necessarily to have oral
 6 argument on any of the outstanding motions. And was, you
 7 know, we're developing positions on them, we're close to
 8 entering orders on some more of these.

9 The orders might not be coming out as quickly as you
 10 would all like, but there are orders that are coming out and I
 11 know that we have some remaining. Certainly -- I'm not sure
 12 of the count, maybe half a dozen or so that are now fully
 13 briefed. And we're doing our best to try to get these out as
 14 efficiently as we can.

15 I also understand that the issuance of orders on
 16 discovery motions, and making legal determinations, may have
 17 an impact with respect to the scheduling on cases, to the
 18 extent that the orders would suggest that some further
 19 discovery of some sort can go forward.

20 There's been some suggestion, I think one of Mr.
 21 McCoy's proposals, as I understand it, is that we do something
 22 with respect to further time for discovery once a discovery
 23 order has been issued.

24 And I can see that that might apply in some
 25 situations. It might be appropriate in some situations. But

1 implicated, the product manufacturers implicating would have
 2 the opportunity to -- had the opportunity to participate in
 3 that deposition, that they could be utilized.

4 That -- you might have certain different views about
 5 that, but that's my broad instinct, by way of example, with
 6 respect to how that would go. If there's something that calls
 7 for production of documents and we are ordering further
 8 production of documents, that might indicate some further
 9 information has arisen from the documents at that production,
 10 I think it could very well be a different story.

11 Just by way of example as to what my thinking is
 12 about some of these issues.

13 Okay. So I think what I would like to do would be
 14 to start out with you on the B-1 issues. And let's get right
 15 into this with respect to the -- the way we lined it up was,
 16 and exactly the way it's postured is less important to me than
 17 having a discussion about the issue.

18 And I did get some further submission from Mr.
 19 McCoy's team late yesterday. I mean, to be frank, I skimmed
 20 it in my Chambers at 4:00 yesterday, I think, something like
 21 that. And I want to just hear from Mr. McCoy a little bit
 22 with respect to what the proposal is with respect to that.

23 And my sense is, and I will tell you this, that when
 24 the question came up with respect to having the conference, I
 25 was -- I mean, I wasn't sure how the defendants were going to

1 respond, and I was -- to be frank about it, pleasantly
 2 surprised that the defendants responded and said, sure, they
 3 thought a conference was a good idea.

4 And so that, frankly, gave me some suggestion that
 5 the defendants were willing to talk to the plaintiffs about
 6 making some adjustments, given some of the issues that had
 7 been raised, in a meaningful way.

8 And as you know, we've always been trying to
 9 encourage you all to talk and try to find ways in which you
 10 could help us to solve problems, so that we don't make -- have
 11 to make hard up and down rulings.

12 After all, you guys know a whole lot more about
 13 these cases than we do, and when you can resolve things
 14 amongst yourselves, it's very, very helpful, to me, anyway.

15 So -- and I thought this might have been one where
 16 there was the possibility of some discussion between the
 17 plaintiffs and the defendant. I don't know if you had any
 18 more discussion about it or not. But let me just, first of
 19 all, hear from you briefly, Mr. McCoy, with respect to the
 20 adjustments that you would like to have made, and the
 21 circumstances that would relate to this.

22 If you want me to try to tee up what I understand
 23 about it, I will. Let me do this --

24 MR. MCCOY: I just want to make sure I got the right
 25 one in front of me, Judge. This is the discovery

1 consolidation item under Roman Numeral 1-B, and number 1 that
 2 the --

3 THE COURT: Yes. Here's what -- here's the way I
 4 understand this. You have, obviously, a number of elderly
 5 witnesses. I presume all or most of those witnesses are --
 6 are probably also plaintiffs.

7 Maybe they're already been deposed in their own
 8 cases. I don't know. And maybe they have information with
 9 respect to conditions at particular work sites that could
 10 impact upon other cases.

11 My judgment is, that it is reasonable for you to be
 12 able to identify those situations where you think a particular
 13 elderly witness, and, frankly, I'm not sure it should be
 14 limited to elderly witnesses. Any particular witness, has
 15 information that would relate to 2 cases, 10 cases, 20 cases,
 16 and you have good faith basis to believe that that particular
 17 witness was in a particular situation with respect to a
 18 particular plaintiff, another plaintiff who's got another case
 19 that you can identify, that you can, you know, in effect
 20 certify, or make a representation as counsel, good faith
 21 representation as counsel, that you believe this witness has
 22 information that's going to affect case number 1, case number
 23 12, case number 15, case number 35.

24 And I see no difficulty with you noticing a -- the
 25 deposition for multiple cases, after you have made and

1 undertaken that assessment. And even -- but what I would --
 2 what I would -- to the extent that I would permit this to
 3 happen, it would be a deviation from protocol that you would
 4 be -- have the responsibility to do that, and only provide
 5 notice to those parties whose products are going to be
 6 implicated.

7 Now you have a good faith basis to do that. Now
 8 that doesn't necessarily mean that this guy's going to say for
 9 sure that I saw this guy, you know, tracking asbestos off of
 10 the surrounds of a GE turbine. But if there's a basis to
 11 believe that this witness has reasonable knowledge that there
 12 was this kind of activity going on in this particular area
 13 that's going to have an impact upon this particular plaintiff
 14 in this particular time period, I would say you should be able
 15 to do it.

16 And I would be -- I would want to hear from
 17 defendants as to why he should not be able to do it, under the
 18 assumption that you have otherwise complied with the principal
 19 objectives of the protocol, as would relate to that particular
 20 witness. And many of the protocol issues that we have raised
 21 are -- and the information that's supposed to be provided,
 22 relate more to the particulars of individual plaintiffs, to
 23 the extent it talks about, you know, medical records, and to
 24 the extent it might talk about, as opposed to, I don't know,
 25 Social Security records that would show the earning statements

1 that would indicate where somebody would have worked, things
 2 like that.

3 I suppose that might be something that would relate
 4 to particular co-workers who would have -- who would be site
 5 witnesses.

6 But I don't think it's enough to say this guy worked
 7 at the Quad Cities facility. If I hear, and I suspect the
 8 defendants are probably ready to tell me, that facility was 20
 9 square miles, or who knows what, and there were 12,000
 10 different structures, and there were 8,500 turbines, and you
 11 got to be more specific and particular about that.

12 That's the way I would look at that. But I'm not
 13 going to be responsive to hearing the defendants say, no, it's
 14 got to be one at a time. As long as you have some reasonable
 15 attachment.

16 I'm liking that Mr. Harris is waving his head up and
 17 down. He thinks these are all pretty good ideas. I'm happy
 18 to have him sit at the table, if he's going to keep doing
 19 that.

20 So what do you say, Mr. McCoy?

21 MR. MCCOY: Judge, everything you said is right.
 22 The only thing I would add is that -- is to make the
 23 disclosure of the job site the guy is going to testify about,
 24 and the products that he's going to implicate, or the --
 25 whatever it is -- who's got the product --

1 THE COURT: Right.

2 MR. MCCOY: -- with asbestos on it.

3 THE COURT: Right.

4 MR. MCCOY: Which we can do. And we'll -- we'll say
5 it's as to these particular defendants that were affected.
6 And there may be some defendants who aren't the product
7 defendant, but the equipment defendant themselves, but who
8 have responsibility for the job site.

9 THE COURT: Yeah. Yeah, yeah, yeah. Some -- the
10 reasonable theory of liability. I understand that.

11 MR. MCCOY: And I would ask you if it -- probably
12 one of the caveat, which is if the guy is testifying about
13 knowing a particular individual at that job site, and what
14 that particular individual did. Because, typically, we talked
15 about how these people get approved, 50 or 100, or sometimes
16 more pipefitters, the guy may know what one or two of the
17 people actually did, but the rest of them would just be
18 knowing that that activity, creating that exposure with that
19 brand or product took place.

20 So I would say you should identify the people that
21 he -- in addition to what Your Honor said, the people that he
22 actually knows about by person, by face.

23 THE COURT: Yes. Terrific. You know -- you know
24 enough now, I think, to know what Judge Robreno thinks about
25 the causation evidence, and what's going to be necessary in

1 order to survive summary judgment.

2 And that's the kind of thing that I'm talking about.
3 Now is there any reason -- let me ask the nay-sayers here at
4 the end of the table, Mr. Mulholland and Mr. Setter. Is there
5 any reason why this doesn't make sense?

6 MS. STUDEBAKER: Yeah, as I said, they're going to
7 pass to me, I think. No, that's exactly, we were kind of
8 talking among ourselves -- Jennifer Studebaker for the record
9 -- but that that's exactly what we were asking for.

10 That's what we wanted the plaintiffs to provide us,
11 not simply a list that has a name, address and whether the
12 person is represented by Cascino Vaughan.

13 THE COURT: I thought we thought this all up
14 ourselves. You mean you're not going to let him think you put
15 that in my lap just to stop --

16 MS. STUDEBAKER: No, sir. Absolutely not. But
17 that's what we want. And we think it's a great idea.

18 THE COURT: Mr. Spinelli?

19 MR. SPINELLI: No, the only thing I was going to
20 say, Judge, is that there has to be some real particularity of
21 the link between the product exposure and --

22 MS. STUDEBAKER: Yes.

23 MR. SPINELLI: -- the plaintiff. And it seems as if
24 Mr. McCoy is agreeing to that, at this particular time. I
25 didn't think there was an agreement to that before, but it

1 just can't be generic job site testimony, and saying it
2 applies to all these guys. There has to be a link. In
3 certain litigation they call them placement witnesses. They
4 have to put that product with that particular plaintiff.

5 If that is what the Court is talking about, and I
6 believe it is, and if that -- Mr. McCoy is agreeing to it,
7 which I believe he is. I think that's the --

8 THE COURT: I'm not sure I know it by all these
9 particular labels that you --

10 MR. SPINELLI: Right.

11 THE COURT: -- but, yeah, it sounds like the same
12 concept.

13 MR. SPINELLI: Right.

14 MS. STUDEBAKER: Yeah.

15 THE COURT: Well okay. So I would -- I would
16 suggest that what needs to happen is, you know, once again, as
17 we do, and we often do quite successfully when Ms. Studebaker
18 and Mr. McCoy or Mr. Cascino are involved, is to -- or we'll
19 bring Mary Margaret Gay involved, bring these ladies together
20 with Mr. McCoy or Mr. Cascino, whoever, but have someone
21 dedicated to this and get it done within the next couple of
22 days.

23 That is in terms of writing up another protocol, if
24 it's an adjustment, if it's an amendment, you know, whatever,
25 something like that. Mr. Lauth, you look agitated.

1 MR. LAUTH: How does this differ from what the
2 protocol currently requires? That's what I'm not clear on.
3 All we've asked for, in terms of the naysaying, is that those
4 plaintiffs that they're proposing to offer testimony for, or
5 on behalf of, however many people are cross-referenced into
6 this site worker's testimony, we just want, and to channel Mr.
7 Drumke for a minute here, answers to the interrogatories that
8 tell the who, what, where and when about the plaintiffs that
9 this guy's going to offer testimony for.

10 We can't do an effective cross-examination on their
11 elderly witness, when we don't know anything about the
12 plaintiffs that he's purporting to testify about. If they
13 say, yeah, I was at work site X from 1945 to 1955, and all of
14 the subsequent plaintiffs have no, you know, we soon later
15 find out have no connection or overlap on the years, then
16 we've wasted our time.

17 We've wasted everybody's time under a compressed set
18 of deadlines, sitting in a deposition where a guy gives
19 generic site worker ID that won't help any -- it won't help
20 plaintiff overcome the burdens that they have to put on -- or
21 that they have to respond to in our motions for summary
22 judgment.

23 THE COURT: Well I'm not going to let -- I'm not
24 going to let you snatch away from the prospect of having an
25 arrangement by those comments. Because I think it's sensible,

1 maybe it goes a little bit further than -- you know, I mean,
 2 it's -- a lot of this is a matter of degree. I'm not sure how
 3 close the placement has to be, to use Mr. Spinelli's phrase.

4 But -- and that's what I would like Ms. Studebaker
 5 and Mr. McCoy to sit down and try to work out. You can jump
 6 in and do it, you know, and sit down and work it out.

7 And I think generally along the lines of what you've
 8 done with the protocol is right. I thought the protocol was
 9 meant to limit only one -- one, the deposition notice for one
 10 case at a time. Okay.

11 You've not been using that way, that's not --
 12 okay. I thought there was language in there like that.

13 MS. STUDEBAKER: All right.

14 THE COURT: All right. Good. Well that takes care
 15 of that. Mr. McCoy, are you satisfied with that?

16 MR. MCCOY: Yes, Judge.

17 THE COURT: Okay.

18 MR. MCCOY: We'll work that out.

19 UNIDENTIFIED COUNSEL: Your Honor, is there a
 20 certification and --

21 MR. MCCOY: We would invite Ms. Studebaker up to the
 22 Lake Michigan cooler air, if it is that way anymore with the
 23 climate changes.

24 THE COURT: Maybe she'd be grateful to have that.

25 Yes, Mike?

1 MR. CASCINO: As I -- I'm not sure if I'm hearing
 2 this correct, but what I -- Mr. Spinelli made a comment about
 3 the mere testimony. If you have an individual who perhaps
 4 testifies as to 2 or 3 particular plaintiffs, but his
 5 testimony, if those defendants are there, may be applicable to
 6 other cases which we could list for that particular job site,
 7 but it would seem to me that as to the cases that that
 8 plaintiff doesn't necessarily know the -- or the witness at
 9 the deposition doesn't know that particular plaintiff, that
 10 those are instances that maybe has to be worked out where
 11 there is not a need for these new interrogatories to be
 12 answered and everything like that.

13 THE COURT: No. No. What I'm saying is -- I mean,
 14 yes, you're right. The witness might not know, but I cannot
 15 accept the fact that the lawyers wouldn't know. The lawyers,
 16 you guys, need to know what potential cases this witness's
 17 testimony is going to implicate.

18 And if you've not -- if you've not noticed the
 19 deposition in connection with those potential cases, and not
 20 just that, but the potential targets, the potential product
 21 manufacturers who you reasonably believed would have been
 22 responsible for some exposure at that location, that's the
 23 obligation that I believe needs to be -- and, frankly, I, you
 24 know, I've gone back to this a lot of times.

25 I guess I would have thought, or hoped and one of

1 the things that I saw that came in the other day as we were
 2 looking through some things is it looks to me like there's
 3 more organization to the way in which you guys have all these
 4 things set out now, maybe that had been. I don't know. I
 5 don't know, because I don't know what the genesis of it was,
 6 but that's what I'm saying in terms of the requirement.

7 UNIDENTIFIED COUNSEL: Tying that into the concept
 8 of disclosing the very knowledge I think is key to a lot of
 9 things on this agenda. There's a place for the line recently
 10 drawn by Your Honor to just tell us what it is. That's how I
 11 would see us working that out, and that we would be making
 12 sure that there's sufficient attorney knowledge as to what
 13 witness -- what cases it was pertinent to, what's described in
 14 the notification about the deposition.

15 That's how I would envision it.

16 UNIDENTIFIED COUNSEL: A lot of attorneys involved.

17 THE COURT: Okay. I, you know, I -- I mean, I'm
 18 just, frankly, fundamentally not sure that I agree with you on
 19 this attorney knowledge business, and we'll get to that. But
 20 I think the message that I've given is pretty clear. I hope
 21 it's pretty clear, and that's the way that I see it.

22 Now I would also say this, because I am concerned,
 23 and I think that, you know, you might think it imposes burdens
 24 upon you, but these are burdens that you've agreed to
 25 undertake by representing these clients, as far as I'm

1 concerned.

2 That to the extent that it can be demonstrated that
 3 there was -- when the witness occurs, and the witness comes in
 4 and testifies and never says anything about, you know, a GE
 5 product, or a Westinghouse product, or whatever it happened to
 6 be, I'm not saying that that in and of itself would
 7 necessarily bring about a proper motion for sanction with
 8 respect to cost to have the lawyer for that be there.

9 But I would say, it might set up a suggestion that
 10 such a sanction might be appropriate, and then would put me in
 11 a position to go back to you and say, the witness didn't
 12 identify the product, tell us your good faith reason why you
 13 thought that that witness might have been, you know, might
 14 have implicated that particular product.

15 And maybe there was a diagram that showed that
 16 product was there during that time frame. I don't know,
 17 something like that.

18 You know, that would be potentially some basis. But
 19 that's what I'm thinking about. Okay. Now the next one is
 20 B-2, and that relates more specifically to -- I guess it's --
 21 (Pause)

22 THE COURT: Okay. Well, Mr. Cascino, let's talk
 23 about Quad Cities evidence -- right that's -- my understanding
 24 is -- Joel's reminding me that we're talking now about your
 25 requests for consideration of consolidation of discovery with

1 respect to, I guess it's GE products on this one.

2 Consolidation with respect to 30(b)(6) notice?

3 MR. CASCINO: Yes, Judge. Right.

4 THE COURT: Okay. Well let me give you what my
5 reaction is to that, and then maybe you can kind of bounce off
6 that. And this is your client, right?

7 MS. STUDEBAKER: Mr. Fonstad.

8 THE COURT: I'm sorry, Mr. Fonstad. Okay. Sorry.
9 I keep getting them mixed up. Okay. I think that the
10 question goes to the extent of the adequacy of the 30(b)(6)
11 notice. And we've written a bit on our views with respect to
12 that, you know, we think obviously it's consistent with what
13 the law is.

14 And I am not offended, and I would hope that you and
15 your client would not be offended, by a notice that might call
16 for a deponent for -- and for multiple situations, and
17 intersect a consolidation of a witness who would have
18 information with respect to what GE did at the Quad Cities
19 facility.

20 I don't know anything about the facility. But my
21 recollection is that there's something like 25 potential
22 plaintiffs in Quad Cities --

23 MR. FONSTAD: Yes.

24 THE COURT: -- facility?

25 MR. FONSTAD: Well there's only actually evidence of

1 3 in the motion, and we've dealt with that. We're -- I
2 haven't seen these other 22 from Mr. McCoy so --

3 THE COURT: Well, okay. Well, obviously, he's got
4 to tell you who the plaintiffs are.

5 MR. FONSTAD: That's one --

6 THE COURT: Okay.

7 MR. MCCOY: They may not be all cases where GE was
8 the defendant, but they're cases of people working at Quad
9 Cities.

10 THE COURT: But, to me, I mean, we've looked at this
11 30(b)(6) issue in connection with particular individual cases.
12 All right? And we've entered some rulings with respect to
13 particular individual cases. So I don't see anything wrong
14 with letting, you know, let there be one notice, or you could
15 -- might it affect -- pertain to multiple areas that the
16 witness needs to be prepared for. You might designate more
17 than one witness. I don't know, it's up to you, obviously,
18 under 30(b)(6).

19 But, you know, to the extent it can be done at one
20 time, why not let it be done at one time? If his notice has
21 the requirements that I think our previous rulings have made
22 fairly clear with respect to particularity and the extent of
23 that, and what the basis is for him to believe that, you know,
24 your products are involved and that's -- to me, it goes to the
25 question of the adequacy of the notice.

1 And the fact that it might call for -- or might
2 relate to, you know, 3 witnesses, or even 20 witnesses, I
3 don't -- I mean, that's a -- that's a problem of
4 quantification, not qualification. That's the way I see it.

5 And that's the way, you know -- whatever rulings we
6 come out on this will be very much centered around that
7 concept. Do you want to give me some push back?

8 MR. FONSTAD: That's -- I mean, no, I don't, because
9 that actually wasn't at issue in any of the Quad Cities's
10 briefing whatsoever. The issue is not whether or not GE
11 objected to this notice being done in 3 cases.

12 THE COURT: So what is the issue?

13 MR. FONSTAD: Well the issue is, again, it's a scope
14 issue in terms of the plaintiffs were not working around the
15 various products. So that background on Quad Cities, even
16 though the motion the defendants have is off the table, is my
17 understanding, based on the --

18 THE COURT: Oh, well then don't -- let's not -- I
19 don't need to worry about it.

20 MR. FONSTAD: Okay.

21 THE COURT: If it's off the table, I don't want to
22 put --

23 MR. FONSTAD: But, anyway, just generally speaking,
24 then. In any case, any job site, as long as there's some
25 evidence tying the plaintiff to the particular product, be it

1 a turbine, be it a specific type of electrical product,
2 something like that, it's fine for us if there are multiple
3 plaintiffs who are around that same product --

4 THE COURT: Yes.

5 MR. FONSTAD: -- to do a deposition that applies to
6 all of them. That's never been our objection. Our objection
7 to the 30(b)(6) is -- so far have been -- they've been way too
8 broad, asking for like every document GE has, or is going to
9 testify --

10 THE COURT: And we've dealt with that.

11 MR. FONSTAD: Yes. And since that --

12 THE COURT: Your belief is, he's not been responsive
13 to --

14 MR. FONSTAD: Well since that point in time, since
15 they've been dealt with, we've received one new 30(b)(6)
16 notice from plaintiffs in the Woods and Jurglanis cases, where
17 GE has not responded to it. But we believe that that notice,
18 as well, doesn't address your prior orders, or the recent
19 order from Judge Angell, the Jasad (phonetic) case.

20 Again, which is that you need to tie a plaintiff to
21 a product to keep it up, yes.

22 THE COURT: Okay. All right. Okay. Good. So I
23 don't think we need to do anything more on that. The question
24 of the consolidation of expert reports. I'll just carry on,
25 and ramble on, and sort of opine about general thinking with

1 respect to that.

2 And my reaction would be, number one, I do not have
 3 a knee-jerk reaction that says, no, you can't do it. My
 4 reaction would be, what is the nature of the expert report?
 5 What type of expert is it? What's the opinion? And is the
 6 opinion sufficiently particularized to have applicability to
 7 more than one case?

8 Now it seems to me that, if you're talking about
 9 anything that relates to medical condition and causation
 10 issues relating to medical conditions of particular
 11 plaintiffs, pretty hard way to see that you're going to be
 12 able to have one medical person that's going to say more about
 13 the more than one plaintiff, unless you just set it up as this
 14 is the general proposition with respect to the way the disease
 15 conditions were, and the effect that it has upon people, and
 16 the effect of aging, and whatever effect that you have.

17 But obviously there's going to have to be one big
 18 section that would say as to this plaintiff's medical history,
 19 which is this, this is my opinion as to this plaintiff's
 20 medical history, it's this, it's my opinion -- you know,
 21 something like that.

22 And if you did something like that, and put it in,
 23 you know, in one report, I'm not sure the defendants would
 24 object. And if they did, I'd want to know why. You know,
 25 again, as long as there's within the body of the report enough

1 particularity that it's sensible with respect to the way in
 2 which a defendant can respond to it.

3 Industrial hygiene issues, which I know a little bit
 4 less about then -- not that I know a lot about the medical,
 5 but we don't deal with those quite as much. But certainly a
 6 report that might go to some description of the impact of
 7 conditions in a particular location, at a particular time, if
 8 that's going to -- that seems to me could very well apply to
 9 two or three different witnesses, or plaintiffs, or 10
 10 plaintiffs, I don't know, potential. If it's particular
 11 enough, it could apply.

12 But to the extent that the industrial hygiene work
 13 also relates to the medical -- something about the medical
 14 condition, or it's dependent upon, or reactive to the medical
 15 issues of a particular plaintiff, maybe not.

16 I don't know enough about the industrial hygiene
 17 expert work to know about that, because I've not dealt with it
 18 very much. That's kind of my general thinking about this.
 19 Anybody -- yeah, Mr. Lauth.

20 MR. LAUTH: Your Honor, one thing that may be
 21 helpful -- personally I'm not on behalf of my client, as you
 22 seem to be, I don't have a knee-jerk reaction against it. But
 23 I think I'd like to see what it is that he's conceivably
 24 planning on doing.

25 So to the extent that the report that you conceive

1 -- hopefully want to use is generic in nature, if you could
 2 produce, you know, a draft up, for example, that may be able
 3 to give us some inclination as to where you're going with it,
 4 such that we know what we could give to our experts, and we
 5 know how to use it in the context of a case, I mean, it sounds
 6 like a potential efficiency mechanism that may help us out in
 7 terms of the overwhelming burden that it's going to be to get
 8 all the expert reports.

9 For example, CVLO 3's got, you know, 100 plaintiffs
 10 in it, or something like that. And that's going to be a huge
 11 burden for all of our experts, plaintiffs and defense alike.
 12 If we could perhaps see a draft and work, you know, in the
 13 context of maybe getting an idea of what you're planning on
 14 doing, and whether, you know, if we accept this from you and
 15 you accept, you know, something similar from a defendant. And
 16 even perhaps with the right to supplement saying, you know,
 17 should we get past remand, and are in front of a transferor
 18 court, you know, maybe you want to sharpen the pencil a little
 19 bit, and we can provide for that, you know, after the fact for
 20 the two or three defendants who may remain in the case after
 21 dispositive motions.

22 It seems like a reasonable proposition to me.

23 THE COURT: I'm not so sure I like what you said
 24 about --

25 MR. LAUTH: I know. I knew you wouldn't like that.

1 And I went probably too far there.

2 THE COURT: Yeah.

3 MR. LAUTH: But maybe on the generic aspects we can
 4 certainly talk about it.

5 MR. FONSTAD: Just -- maybe there's a possibility,
 6 Mr. McCoy, that you've done it in other litigations with a
 7 similar report. I don't know something like that might work,
 8 where it's been accepted by the parties, obviously, and the
 9 Court absolutely.

10 Maybe you can do that.

11 My only concern is, we already have generic reports.
 12 So, for example, you guys had your pipefitter your -- so you
 13 have Joseph Farity, you have William LaPoint, so you have kind
 14 of your "product experts."

15 And those guys have generic reports that you served
 16 the exact same report in every case. And then your IH, Mr.
 17 Conrad, he has a generic report that runs through all the
 18 data, and then he creates a case -- a specific report where he
 19 says, this guy had this exposure, he's based on the studies,
 20 he had significant exposure to asbestos.

21 So I'm not quite sure what new generic reports
 22 you're looking -- what exactly are you proposing that's
 23 different? Because I think we need, for the MSJs especially,
 24 for potential Daubert motions, which would then exclude
 25 causation evidence and give a defendant a summary judgment

1 grant, I'm not quite sure what new generic things are
2 different from what's already being done.

3 MR. MCCOY: That's probably the reason why we think
4 that the reports need to be consolidated, and what you just
5 said, most of it's already been said and done by the experts,
6 the only difference is the name of the pipefitter or the name
7 of the boilermaker.

8 And I don't mean to make it too simple, but because
9 there are, as the Judge pointed out, the individual causation
10 differences. But if you take out the individual causation
11 from the medical records, and the asbestos getting in the air
12 at a job site through the activity of the pipefitter, is an
13 industrial hygiene concept, it's generic to everybody who's
14 around it, using it, or is a bystander.

15 And that's what these reports would deal with, is we
16 basically had a job site for a type of product and equipment,
17 this is the characteristics about how asbestos would affect
18 everybody within whatever boundary lines are drawn by the
19 expert report.

20 And that -- that's how I perceived it. And going a
21 step further, I mean, yeah, there aren't enough experts in the
22 asbestos world that accommodate this number of cases, unless
23 you do something about it. But that's on both sides, I think.

24 The other thing would be that when you get to the
25 summary judgment in the case, and the idea would be to rule on

1 But once someone is going to be offering at trial an
2 opinion that this data compares to this particular witness,
3 for this particular exposures, that's where I think we need
4 the case specific reports, so we can do the Daubert motions.

5 THE COURT: The one thing I would -- the one thing I
6 would caution you about, frankly, is that not to forget, you
7 know, your first, or second, or third year of law school
8 mantra. The objective of all these briefings is not necessary
9 to make it easy for you all, it's to make it easy for the
10 Judge who has to decide it.

11 And I wouldn't want to have Judge Robreno hear that
12 I sort of put the stamp of approval on something whereby you
13 got a big, massive report, and say you've got to go through
14 this report and figure out which part of it pertains to
15 witness -- you know, pertains to this particular plaintiff.

16 So when you've got to be responsible for managing --
17 which is why I had thought that maybe the way to do this is
18 not so much one big generic report, but one section that, you
19 know, you just cut and paste and plug into all your reports.

20 Which maybe you kind of do that already anyway. And
21 so that might make this issue not that big of a deal. Because
22 just part of the -- what I wanted to find out from you, Mr.
23 McCoy, in terms of, you know, what you were thinking of, and
24 maybe Mr. Lauth's suggestion is a good one, is to give some
25 kind of a draft with respect to that.

1 your Daubert type issues and (inaudible) report for a lot of
2 cases.

3 THE COURT: Yeah, maybe. Mr. Fonstad?

4 MR. FONSTAD: The only concern I have is that, I'm
5 perfectly okay with -- I think all defendants do the generic
6 report too, where we have someone to just talk about what a
7 product is like, for example.

8 THE COURT: Right.

9 MR. FONSTAD: But once you get into the unique
10 record of a case --

11 THE COURT: Right.

12 MR. FONSTAD: -- it matters a lot. Let's say a guy
13 working on a turbine. If the guy was around the turbine when
14 the shell was on, he's not going to be exposed to asbestos.
15 If he was just walking by on the plant floor while that was --
16 or while work was being done even on the low pressure part of
17 the turbine.

18 But -- so a lot of the specific exposures, which is
19 what, you know, the cases turn on, we require specific reports
20 for each case.

21 And so I think -- I don't think there's any
22 objection to a generic report saying, I have a guy who's going
23 to talk about, you know, a turbine and -- or I have a guy who
24 can say, I know that IHD, you know, that generally is out
25 there.

1 MR. MCCOY: That's fine, Your Honor. I agree with
2 that.

3 THE COURT: All right.

4 MR. MCCOY: And we would send that essentially --
5 for everybody.

6 THE COURT: All right.

7 MR. MCCOY: Especially like the (inaudible).

8 THE COURT: Yes. Because, I mean, you know, there's
9 a burden on everybody, and there's burdens on us. And it's
10 piling up for us, too.

11 MR. MCCOY: So many Daubert motions on Dr. Frank.

12 THE COURT: All right. I -- there's a question here
13 about the redundant and premature discovery, which I just have
14 a question on this next -- I'm not sure whose agenda that was,
15 but somebody raised questions about it. So let's -- who
16 raised questions about that, and what's the issue?

17 MR. MCCOY: That was from plaintiffs, Judge. And I
18 have not a lot more to say about it because I've raised it
19 before, so I'm not going to restate the --

20 THE COURT: I mean, to be honest --

21 MR. MCCOY: It's basically the medical and the
22 bankruptcy and (inaudible) question yet that asks us before we
23 even investigated the case to admit that we really don't have
24 evidence. But that's it, Judge.

25 THE COURT: All right.

1 MR. MCCOY: I mean, that's why I've got it on there.

2 THE COURT: All right. And the 30(b)(6) notices and
3 depositions, is there anything we need to talk about on that
4 issue, beyond what we've already said in the context of the
5 discussion above under the Quad Cities GE dep that got
6 noticing?

7 MR. MCCOY: Let me just check my notes, Judge. I
8 don't think so. I had -- I guess I had one other question on
9 that item when it comes up. And that is depositions of -- at
10 the deposition itself, and I will say that the last deposition
11 of the GE turbine expert was, I don't think there was an
12 objection by defense counsel so, I think we got something out
13 of it about ten days ago.

14 THE COURT: Mr. Fonstad maybe wasn't there, is
15 that --

16 MR. MCCOY: Well he's directing the traffic, he
17 indicated to me, so whatever, they had an attorney there, but
18 that -- it was -- it went very smoothly. So --

19 THE COURT: Good. I like to hear that.

20 MR. MCCOY: -- but the question of -- that we have
21 seen sometimes in depositions, is that the objection is made
22 that the witness -- that the question is outside the scope of
23 what this witness is designated to testify about.

24 Which I understand the objection. I'm not saying
25 the objection is a valid objection, but if that's going to

1 occur, I would like to know up front, which we often sometimes
2 get, which topics in the notice this witness is going to
3 cover, and then which topics would be covered by another
4 witness.

5 So we would know that up front, rather than find out
6 at the deposition that, oh, we're going to need more
7 witnesses, and then it takes another month to get that guy
8 scheduled.

9 I'd like to know that up front when we serve our
10 notices, that the appearance of three people that are going to
11 be covering these topics, and here's the one would cover --

12 THE COURT: Well they're obligated to do that under
13 the Rule. They've got to file a response and -- that's how I
14 understand it. What -- has there been a problem with this
15 from your end?

16 MR. MCCOY: It's not so much that it comes up all
17 the time, but it does come up and then -- and that's all I'm
18 saying, Judge.

19 So, I mean, I -- that's all we ask for is that that
20 be up front.

21 THE COURT: Okay. All right. Now let's go back to
22 the A, discovery supplementation questions. And I guess I'd
23 ask -- is it you, Ms. Studebaker?

24 MS. STUDEBAKER: Yes, sir.

25 THE COURT: All right. Just give me the -- just to

1 make sure that I'm keyed in on the right -- which aspect of
2 this, on A-1, your motion's in the --

3 MS. STUDEBAKER: Well we filed a motion to strike
4 the 719 page disclosure that CVLO provided to us June the
5 12th. Which is -- there are a number of different issues with
6 it.

7 One was that for a number of the groups of cases the
8 top ten, obviously, CVLO 1 and 2, discovery had already closed
9 before we even got that disclosure.

10 In the email that we received from CVLO, it stated
11 that this was supposed to be a supplementation for the
12 interrogatory responses for all of the plaintiffs. So,
13 obviously, to us, it appeared that they were trying to
14 supplement the discovery responses for plaintiff's cases that
15 were al -- that where discovery -- fact discovery was already
16 closed.

17 For the subgroup 3 cases, and, obviously, Your
18 Honor, this is a full copy of it, if you'd like to see it.

19 THE COURT: Well I had -- I don't really want to see
20 all of it, but I want to give some examples. And I think
21 Lauren gave me some, and I want to make sure that it's the
22 same as -- yes.

23 MS. STUDEBAKER: And you've got two different lists,
24 as you see, they're separated. One is the site workers by job
25 site, which basically just lists the person's name, the job

1 site, their address, and whether or not they're represented by
2 counsel.

3 That's all the information he gives us.

4 THE COURT: Now my understanding is, this was
5 presented to you as a supplementation to the standard
6 interrogatories that were propounded, what was it, like in the
7 fall of 2010?

8 MS. STUDEBAKER: Yes, sir.

9 THE COURT: And were under Judge Reed's order.

10 MS. STUDEBAKER: Reed's order.

11 THE COURT: The agreement, whatever. To be answered
12 -- Mr. Drumke always reminds me of the date.

13 MS. STUDEBAKER: February 21st of 2011.

14 THE COURT: Okay. February of 2011.

15 MS. STUDEBAKER: Yes.

16 THE COURT: Right? Okay. Was there, or what I'm
17 not clear about, and I'm not sure if I asked Joel about this,
18 was there, or was there not a mechanism whereby -- when you
19 were with Judge Reed, whereby a party could ask for any
20 particular legal relief, or order compelling answers to
21 interrogatories, or relief from a failure to answer
22 interrogatories?

23 MS. STUDEBAKER: The only part of the order that I
24 recall, in terms of answering the interrogatories, was
25 obviously, they were due. The plaintiffs asked for an

1 extension, they were due in February. And that the plaintiffs
 2 were to answer those without further objection.

3 So we expected to have full answers to all the
 4 interrogatories for all the plaintiffs by the February 2011
 5 date.

6 THE COURT: Okay. But you didn't get them?

7 MS. STUDEBAKER: Right.

8 THE COURT: And was there some kind of an extension
 9 granted?

10 MS. STUDEBAKER: No, sir.

11 THE COURT: Or was it just not done?

12 MS. STUDEBAKER: There was an initial order that
 13 required -- that entered the interrogatories, adopted them,
 14 and required the response, I believe, by October of 2010. The
 15 plaintiffs asked for an extension, which was granted, and that
 16 gave them that February of 2011 date.

17 THE COURT: Okay. But from 2011, when the answers
 18 had not been provided, under -- because Judge Reed was still
 19 involved from that point until, I think I got involved roughly
 20 the end of May, as I recall.

21 Sometime in May of 2011. Up to that point, did the
 22 defendants take any action with Judge Reed with respect to
 23 seeking to compel responses to those interrogatories?

24 MS. STUDEBAKER: That I cannot answer, because I was
 25 not involved until the time you became involved.

1 THE COURT: David?

2 UNIDENTIFIED COUNSEL: We raised it.

3 UNIDENTIFIED COUNSEL: It was raised more than once.

4 MR. SETTER: Every time we had a conference about
 5 that we are not getting these interrogatory responses, and it
 6 would be deferred and Mr. McCoy and others were saying they
 7 were working on it.

8 THE COURT: Okay.

9 MR. SETTER: The focus shifted to the top 50 cases,
 10 or whatever, right about that time, is what happened. And
 11 that was the --

12 THE COURT: So then, when I came in, I don't
 13 remember the first scheduling orders, but July, I think, June
 14 or July, was the initial scheduling order?

15 And certainly I -- I don't know what -- if it was
 16 ever specifically addressed with respect to any orders to
 17 compel. Does anybody remember?

18 MS. STUDEBAKER: I know we raised it, Your Honor,
 19 repeatedly, with you.

20 THE COURT: Yes.

21 MS. STUDEBAKER: That's --

22 UNIDENTIFIED COUNSEL: There was no -- there was no
 23 orders entered, just we had the deposition protocol came into
 24 play and the deposition protocol was only for the depositions
 25 that were going to occur. And I don't even remember if it

1 required standard interrogatories, or not in the first
 2 protocol, but -- (All talking at once)

3 UNIDENTIFIED COUNSEL: No, no, no.

4 UNIDENTIFIED COUNSEL: Well what --

5 MS. STUDEBAKER: Yeah, it did. It did, absolutely.
 6 It did. That's part of the issue.

7 UNIDENTIFIED COUNSEL: We were not getting
 8 interrogatory answers.

9 MR. MCCOY: Right. But I can say this, that it was
 10 our understanding that those first 9, we had to get those
 11 standard interrogatories done. And then there would be
 12 scheduling of all the other cases, and that's how we saw it.

13 And that would be -- take care of those other cases.
 14 I mean, that was the transition that occurred.

15 THE COURT: Okay. And by asking these questions, I
 16 don't mean to imply that I think that there is necessarily an
 17 affirmative obligation that a defendant has to file a motion
 18 to compel.

19 In other -- or, you know, for their failure to file
 20 you guys skate free. I'm not suggesting or imply that. I'm
 21 just trying to get refreshed on what the status of it was.

22 MR. MCCOY: There was, at least from our
 23 perspective, I'm not saying that it was wrong, or it happened,
 24 but there was like an overnight transition from the mediation
 25 to pretrial, trial.

1 That order came out very quickly and --

2 THE COURT: What do you mean?

3 MR. MCCOY: Well when you took over, you were
 4 assigned to mediate, just like Judge Reed. And that's what
 5 the order from Judge Robreno said.

6 And then about two months later, that was April I
 7 think when you came in. And then about two months later, the
 8 order came down from Judge Robreno changing your role to trial
 9 and pretrial and discovery, dramatic change.

10 So we were no longer just negotiating cases, now we
 11 were in a trial mode, and that change occurred.

12 THE COURT: All right. So, in any event, this
 13 information was simply provided to you without any
 14 explanation, other than it was meant to be a supplementation
 15 of?

16 MS. STUDEBAKER: The standard interrogatory
 17 responses.

18 THE COURT: Have there been answers to the standard
 19 interrogatory responses in -- was this served upon you with
 20 respect to any case, or all CVLO cases?

21 MS. STUDEBAKER: All cases.

22 THE COURT: Okay. So there was -- there had been
 23 interrogatories filed on particular cases that were in the
 24 particular early groups that were going forward, I think,
 25 right?

1 MS. STUDEBAKER: That's right.

2 THE COURT: Some of which with unverified answers,
3 and some were verified answers.

4 MS. STUDEBAKER: Exactly.

5 THE COURT: Okay. But were there -- or are there
6 also -- have the interrogatories been answered in the later
7 groups?

8 MS. STUDEBAKER: Not all of them. No, sir. They
9 have not.

10 THE COURT: It's sort of hit and miss, is that --

11 MS. STUDEBAKER: It is.

12 THE COURT: -- what you're -- is that what you're
13 getting? Are you -- do you have your -- do you have your
14 finger on -- the number, as I understand it, is something in
15 the order of 625, or something like that, remaining cases.

16 Do you have a sense, and I get the idea maybe you're
17 the one who pays attention to this, and keeps track of this
18 for the defense side, as to how many particular cases of those
19 625 have there been answers to interrogatories filed, whether
20 verified or unverified?

21 MS. STUDEBAKER: No, sir. And that's the problem,
22 because we track them slightly differently. We track the
23 verified versus the unverified differently, because the
24 unverified responses, obviously, we're waiting for the
25 plaintiffs to either verify it, or add to it.

1 I don't have a number on how many have been

2 answered, whether we believe them to be fully answered or not.

3 THE COURT: What do you think the number would be,
4 Bob?

5 MR. MCCOY: Signed off on by the clients, we --

6 THE COURT: Either/or, or both.

7 MR. MCCOY: -- provided them, with the expectation
8 that they would be signing, even though they haven't been
9 signed yet. Since the change to the trial/pretrial
10 proceedings, I'm just ball parking, probably somewhere between
11 2 to 300 have been provided.

12 THE COURT: Okay. So that's --

13 MR. MCCOY: A lot of it has to do with when somebody
14 has a deposition.

15 THE COURT: Yes. I understand that. That's -- I
16 understand that's an accel --

17 MR. MCCOY: And I would add one other thing, Judge.
18 This is the actual email that was provided with the order I
19 think that that was actually --

20 THE COURT: Yes. I think I did see that.

21 MR. MCCOY: That's -- we did explain what we were
22 doing. But I'd say that's the number that would actually be
23 answered or --

24 THE COURT: I'm not sure if I saw that exact
25 document, but I understand. I understand that's the

1 information.

2 Okay. So as of this point, then, is it the case
3 that on the, say, approximate 625 remaining cases, that for
4 more than half of them the interrogatories have still not been
5 responded to, either verified or unverified?

6 (Transcriber change)

7 MR. MCCOY: Probably -- probably in that range,
8 right, and then, of course, most of the cases are in the later
9 groups.

10 THE COURT: All right. I'm not going to make any
11 further comment about it, just --

12 MR. CASCINO: Can I take a break -- get a break, you
13 know, to make a phone call and see maybe if there are those --
14 I don't know if they can give me those numbers or not. If I
15 can find out whether --

16 THE COURT: Yeah, sure, you can --

17 MR. CASCINO: I'm not sure about -- I don't know if
18 Bob is sure about the estimates that he's given that so --

19 THE COURT: It's okay. It's not -- I'm just trying
20 to get a raw sense of it, but I'm happy for you to do that at
21 a break.

22 MR. MCCOY: Judge, I'd like to just make one more
23 comment on this because it's -- the answers, you know, the
24 preparation of these answers were on a case-by-case basis,
25 requires a lot more than just the client.

1 If -- if all we're saying is the client has no
2 knowledge of a lot of these things, which is the case, given
3 that a lot of them are dead, that's pretty easy, but the
4 extent, as attorneys can, we're called upon and prior to
5 someplace, state what we know to be based for the claim
6 because a, you know, the client doesn't know that that turbine
7 is a G turbine, but we as attorneys know that job site it is.

8 That -- that attorney information is -- is probably
9 somewhere on the order of 90 percent of the information that
10 will be pertinent to these answers. That's what takes the
11 time to compile an investigation of that, you know, it is --
12 as -- as you know from other filings, it's been ongoing at our
13 firm in a very -- very intense way ever since we got into the
14 pretrial trial mode.

15 THE COURT: Well, how do you -- I mean, to be
16 honest, how do you square that with the attorney obligation at
17 the time of the filing of the complaint to, in effect, certify
18 if it was good faith basis to believe that the allegations in
19 the complaint are accurate?

20 MR. CASCINO: Your Honor, I --

21 THE COURT: You know, substantiate it.

22 MR. CASCINO: That's very easily answered. The
23 problem is this has been 20 years. A lot of folks have died.
24 Plaintiffs have died, co-workers have died. We're no longer
25 are able to use, for example, a dead plaintiff's, you know,

1 statement that he gave us or attorney-client privilege
 2 documents that he gave us because the litigation's gone out 20
 3 years when -- and we were not able to do discovery during
 4 those 20 years.

5 THE COURT: I'm not so sure about that, but I
 6 understand that that's -- that's what you guys think, and --
 7 and that may very well have been the way in which the lawyers
 8 were operating. All right. Okay.

9 MR. McCOY: If we had -- if we had a pipefitter who
 10 worked 30 or 40 industrial sites, we would have good faith
 11 reason to believe he was exposed to every -- every asbestos
 12 product that was used in those kind of settings. I think
 13 that's where asbestos litigation has -- has its roots, is
 14 that, you know, there's a wide variety exposed to sub-travels
 15 (phonetic). That's our good faith belief as plaintiffs'
 16 counsel, and that's the science.

17 But having said that, Judge, you know, we can
 18 certainly say what we know today in these answers and keep
 19 generating these as quickly as we can. We got -- we got more
 20 focus on this now because, as -- as you saw, our data keeps
 21 getting and better. It's easy to generate these answers now.
 22 We can say we know now. It's just that there may be more down
 23 the road that we are learning, and in the next -- as you get
 24 into these -- as you get into a witness, okay, first off, you
 25 call a guy on the phone, and you -- you got to get friendly.

1 These guys are eighty years old. Okay? They don't want to
 2 be involved in legal proceedings, you know.

3 And you say -- you're talking, and you say, "Hey,
 4 you know, Mr. Smith, you know, my name is so-and-so. I'm a
 5 legal assistant for Cascino, Vaughan. I want to talk to you
 6 about this.

7 And, "Oh, well, you know, I can't remember anything.
 8 No, I don't want to get involved." That's the first problem.

9 So you get past that and you get -- get to these
 10 guys talking, and they start talking about, "Well, yeah, I
 11 guess I did work at this place. Yeah, let me think about
 12 that. Maybe it was a GE or a Westinghouse turbine. Think
 13 about it, you know, call me back."

14 So then you call him back, you know, and -- and the
 15 guy's wife answers and says, "Well, he really doesn't want to
 16 talk to you." Okay.

17 And then -- and then you got to -- you got to get
 18 another call back to get around that. And this is -- this is
 19 frequent. You say -- so you get -- you get -- you get the --
 20 you get during the work-up phase several calls, and finally
 21 the guy is starting to give you a lot of information that he
 22 really does know because he's been a pipefitter for years
 23 (inaudible), which is common to many of our clients.

24 So the guy starts talking to you, gives you a bunch
 25 of interview notes. You got your work product, your interview

1 notes. Okay. And that -- that information then expands our
 2 knowledge greatly on certain things.

3 The next phase is that -- is that you schedule the
 4 guy for a deposition to do. So you go and you start working
 5 for a deposition, and then the information gets even more
 6 specific when you're talking about what he really does and
 7 doesn't remember.

8 Then you go meet with him face to face the day
 9 before the deposition, and you -- 'cause he's been a long ways
 10 off, and you can't (inaudible). You meet with these guys face
 11 to face after what they told you before, they might to be able
 12 to -- to, you know, hold up to the standards of -- of the best
 13 of his recollection, whatever it is in these depositions, but
 14 there's another half that he remembers.

15 So then you know pretty much what he's going to say
 16 the night before. Then you go to his deposition, and he still
 17 maybe gets 75 percent of it out, and he may remember more at
 18 his deposition.

19 So it's this whole process that's ongoing throughout
 20 the time when you start working with the witness, and then he
 21 testifies, and -- and as Mike said, yeah, we worked with these
 22 guys 20 years ago when a lot of these complaints were filed.
 23 There was a lot they knew 'cause they were -- they were --
 24 their memories were fresher. Today they're 80 years old
 25 instead of 60, and they're just so reluctant to get involved,

1 and once you get with them, 'cause their memories have aged,
 2 is -- is -- you don't know until you take that final
 3 deposition what you really got.

4 But having said that, Judge, we're certainly trying
 5 to disclose what we know now, based on all these many
 6 interviews we've been conducting, to see what is left of these
 7 people's memories that started 20 years ago, and we're using
 8 that to be able to work quickly to efficiently generate that
 9 information so -- so that the remaining ones, I'm sure,
 10 we'll -- we'll be continuing are continuing to answer, and I
 11 got 10 or 12 answers on what I the call interrogatory 19,
 12 which is a major statement through the whole thing of what are
 13 the claims and what are the products and what are the brands
 14 that's you make from one of our attorneys just the other day.
 15 I don't -- I didn't normally get that many that quickly in the
 16 past.

17 THE COURT: Okay.

18 MR. McCOY: And so I -- I've said a lot, Judge, but
 19 I'm -- but I'm trying -- I'm trying to -- trying to tell you,
 20 you know, we're -- we can say what we know immediately, which
 21 in a lot of these cases they knew nothing, but the spouse knew
 22 something that did come out.

23 The other hand, as in -- as we've taken time to do
 24 these right where we're using whatever attorney knowledge we
 25 should be disclosing, then we'd have much better answers, and

1 everybody knows what to do in preparation of that deposition,
 2 because -- because we're doing -- we're doing more than just
 3 that case. We're actually combining what we think witnesses
 4 are going to say so everybody can -- can work on that case
 5 more efficiently.

6 MS. STUDEBAKER: And whether there's -- I'm sorry.

7 MR. MCCOY: We don't want to be -- we don't want to
 8 be pursuing cases where, like you say, that's not a GE turbine
 9 case. We got plenty of other, you know, defendants in most of
 10 these cases that -- that we're certainly not looking to add
 11 something that -- that -- that's -- hurts us, hurts -- hurts
 12 the Court, primarily --

13 THE COURT: Yeah.

14 MR. MCCOY: -- hurts the defense counsel, too.

15 THE COURT: Yeah, I --

16 MR. MCCOY: So that's our philosophy -- not our
 17 philosophy, that is actually what's going on at our office
 18 every day.

19 MS. STUDEBAKER: And that's what we're looking for.

20 We're looking for the specific information, not 719 pages
 21 worth of data out of their database that doesn't tell us
 22 anything about which plaintiffs that these witnesses may or
 23 may not have testimony about. They're -- the majority of them
 24 are represented by counsel. I looked at one this morning.
 25 There were 84 witnesses listed for one work site, and 80 out

1 of the 84 are represented by Cascino, Vaughan.

2 So even if we could -- if we had time and could
 3 utilize that information, we can't talk to those witnesses to
 4 try to find out. We want the specific information from them,
 5 not this kind of data dump that they've done to give us all --
 6 all the information they have in their database 'cause that's
 7 just not helpful for the work-up of the cases.

8 MR. MCCOY: Right. And so -- so the data dump, as
 9 you call it, was not for purposes of -- of the -- of the
 10 specifics that I described earlier, but it was only for the
 11 purposes in the way the interrogatory was written and our
 12 concern about that.

13 Now, again, if -- if we know where the line is drawn
 14 on this attorney knowledge, information that may be so careful
 15 that we better -- because the question does ask for, "Tell us
 16 all the names of people you know who are site workers, as well
 17 as co-workers, who worked with" --

18 THE COURT: How is the -- how is the --

19 MR. MCCOY: That's the question.

20 THE COURT: How was the question phrased?

21 MS. STUDEBAKER: They -- what they purport to
 22 respond to are standards interrogatories number 16, 18, 20 and
 23 29, and the language of interrogatory 20 -- he's -- Mr.
 24 McCoy's correct that it does ask in interrogatory 16 through
 25 18 about site workers, but interrogatory 29 specifically asks

1 for individuals who have information about the individual who
 2 is alleging some kind of harm.

3 THE COURT: How is it -- do you have a copy of the
 4 specific interrogatory? Does anybody?

5 MS. STUDEBAKER: We do.

6 THE COURT: Good. Thank you.

7 MS. STUDEBAKER: Number 19 says, "For each of the
 8 jobsites identified in interrogatory number 17 state the
 9 following: The types of asbestos containing products which
 10 exposure is claimed, the brand name or trade name of the
 11 asbestos-containing products for which exposure is claimed" --

12 THE COURT: Okay. I -- I got it. The question
 13 that I -- the issue that I'm concerned about, I mean not --
 14 not exclusively, but the issue that I want you to focus on is
 15 whether or not the specific question appears to ask just for
 16 knowledge of a specific plaintiff, as opposed to facts upon
 17 which the plaintiff through his counsel or otherwise, would
 18 expect to be able to marshal in order to establish the claim.

19 MS. STUDEBAKER: No. I think it asks for all of it,
 20 but it asks for, with specificity, not -- okay, we know that
 21 these 84 clients that Cascino, Vaughan represented worked at
 22 A.O. Smith.

23 What we asked for in the interrogatory is -- is the
 24 individual information for each individual plaintiff, and then
 25 linking that to the defendants that testimony could be offered

1 about at those particular jobsites, which is exactly the kind
 2 of information we're getting or we're talking about doing an
 3 additional protocol for for the depositions.

4 THE COURT: Is -- is "you" a defined term?

5 MS. STUDEBAKER: I don't have the page of the
 6 definitions.

7 THE COURT: And are these -- while you're looking
 8 for that, and anybody else can help me, are these
 9 interrogatories that are standard interrogatories used in
 10 what, Madison County or wherever -- what's --

11 MR. MCCOY: Originated --

12 THE COURT: Where do these interrogatories come
 13 from?

14 MR. MCCOY: Originated from Cook County.

15 THE COURT: From Cook County?

16 MR. MCCOY: Yes.

17 MR. WATSON: Your Honor, Brian Watson --

18 MR. MCCOY: Years ago.

19 MR. WATSON: -- Owens-Illinois --

20 THE COURT: Mr. Watson?

21 MR. WATSON: Mr. Watson, right. Thank you, Your
 22 Honor.

23 THE COURT: You're welcome.

24 MR. WATSON: In the place of Edward Casmere.

25 Neither these standard interrogatories are used in

Colloquy

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1 Cook County or Madison County (phonetic). Just for a point of
 2 clarification.

3 MR. CASCINO: Your Honor, these were agreed to, and
 4 Joel Lange, I think can verify this. We proposed these to the
 5 defendants. They were a combination of the Cook County and
 6 Wisconsin, as I recall, and the other side paved the -- sent
 7 this set of interrogatories.

8 THE COURT: Well, I mean look, look. Look, the
 9 bottom line of this is that, and I -- and I -- I'm not -- I
 10 think I felt this when I was a lawyer, but I sure as heck
 11 really feel it when I'm a Judge, is that, I mean, frankly,
 12 lawyers play too many games with answers to interrogatories,
 13 and I think my -- my instinct is everybody probably does it,
 14 and obviously what needs to be responded to, it seems to me,
 15 essentially is what are those facts that you believe establish
 16 the predicate for the claim that's been made by the plaintiff.

17 And I'm just not -- I mean I'm frankly a little
 18 puzzled, Mr. McCoy, to be honest, about your reliance upon the
 19 District Court opinion from New Jersey that's 20 years old
 20 'cause what I thought was articulated in that opinion is what
 21 I understand to be the basic way in which we all operate.

22 And I appreciate that maybe people can parse out
 23 words based upon the way interrogatories are specifically
 24 propounded. I'm sure I probably did it when I was a lawyer.
 25 But it's not helpful to the process. I would have thought

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1 it's really not helpful to the process when you're dealing
 2 with the kind of cases and the volumes in which you are
 3 dealing with them and from the defendants from the -- from
 4 the -- I mean the upset from the defendants is, appreciating
 5 everything you said about your difficulty with respect to
 6 establishing adequate specificity from your particular
 7 clients, but I can -- I've told you a million times, I
 8 completely understand that and have some sympathy for that.

9 But I think that the -- my -- my broad instinct is
 10 that the law looks at this, not just with respect to that
 11 concern, but also with respect to what impact it has upon a
 12 party against whom the claim is being made. And as I tried to
 13 set out in the -- we -- we went to special effort in the
 14 Unzicker decision to, you know, to write on this particular
 15 topic, and I think we need to look at this in the perspective
 16 of how much -- how much -- how is it impacted upon those who
 17 receive the information, and I -- I have to say that when I
 18 just see a -- a list of names, and if -- if our math is right,
 19 and if you've got approximately -- if you got approximately
 20 20 -- 20 names, and that might be a little bit shy, per page,
 21 and you've got 800 pages, you're talking something like 16,000
 22 names? I mean something like that.

23 MR. MCCOY: I -- I don't know what the --

24 THE COURT: I mean it's -- it's --

25 MR. MCCOY: -- but it's -- I'm sure is 1,000.

Colloquy

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1 THE COURT: Yeah. I mean I -- it's not -- it's
 2 not -- well, yeah, sure it's 1,000. I mean there's 20 page.
 3 It's 1,000 times 20. Maybe it's -- yeah, it's about 16,000.

4 MS. STUDEBAKER: Yeah, it's 1398 work sites, so it
 5 has to be more than -- I mean it has to be more 1,000
 6 witnesses.

7 MR. MCCOY: But that is what our cases are about,
 8 and some of these people are more than witnesses.

9 But as -- Judge, let me just tell you this. If we
 10 know what the line is for interrogatory number 19, what we are
 11 and what we aren't supposed to do, like I say, a lot of this
 12 is -- interrogatory 19 is 90 percent. It's counsel's
 13 knowledge that the clients know nothing about that. We know
 14 what that line is. Going forward we will just comply with
 15 that. I mean that -- that's really what we need to know, and
 16 that's -- that's our bottom line thought on this.

17 THE COURT: Well, you know, I mean I -- I'm not sure
 18 I want to tell you specifically where our line is in this kind
 19 of sense, but I would say this.

20 If you want money from these people in settlement,
 21 you darn well better tell them, with particularity, why you
 22 think it is that their product was a factor in causing the
 23 disease condition on your particular client, and you can't --
 24 I would say that you can't, frankly, reasonably expect them to
 25 just pay you money because your client might have been at the

Colloquy

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1 same work site, broadly speaking.

2 And I -- I would think that one would be motivated
 3 to provide as much particularity as you possibly can. And I
 4 understand you have limitations, but you work through it, and
 5 you try to drill down on it, and you focus on the more serious
 6 cases, obviously, higher value cases to you, and you give them
 7 as much information as you can.

8 Mr. Setter. Sorry. Sorry.

9 MR. LAFFEY: Jack Laffey, from Whyte, Hirschboeck in
 10 Milwaukee, I represent Dow Tile Motion Industries and Playboy
 11 in this litigation.

12 Aren't these standard interrogatories? They're
 13 standard interrogatories that the parties agreed to
 14 promulgation of those interrogatories, but don't they apply to
 15 case by case, plaintiff by plaintiff, which means that every
 16 question that's asked relates to a specific plaintiff;
 17 therefore, every response should relate to a specific
 18 plaintiff in a specific case, and how in any set of
 19 circumstances can 800 pages of witness document dumps relate
 20 to one plaintiff as a response to an interrogatory?

21 It's a -- I think it's a simple process --

22 THE COURT: You mean to be asking me this question?

23 MR. LAFFEY: I'm asking you -- it's a rhetorical
 24 question --

25 THE COURT: Indeed it is.

1 MR. LAFFEY: -- and I think what I meant -- tried to
 2 frame it, because it seems to be a fairly simple process;
 3 respond to questions for the cases, and everybody can move on
 4 with some sense of certainty, rather than digging through a
 5 morass of irrelevant information and clogging up the process.

6 THE COURT: All right. I understand.

7 Mr. Setter, did you --

8 MR. SETTER: The only thing I would just add on,
 9 Your Honor, back in the day of Judge Reed and these
 10 interrogatories and when you came on board, I mean that's
 11 exactly the reason that the interrogatories were being done,
 12 is if they wanted us to settle, what are we going to settle
 13 for, where are we at in what cases were even pending, what
 14 defendants are aware of these products, et cetera, and -- and
 15 I'm kind of shocked to hear that two or 300 of these --

16 THE COURT: Try to -- try to tamp down the
 17 hyperbole.

18 MR. SETTER: Okay.

19 THE COURT: I mean I'm not -- I don't need to know
 20 about how shocked you are. I assume you're shocked.

21 MR. SETTER: But I -- I thought that was the purpose
 22 of doing this much like AO-12 is the purpose of getting you
 23 know, what's the medical criteria and then we are trying to
 24 get to what is -- what is the product ID.

25 And here we are back --

1 THE COURT: I don't -- you guys are kind of -- you
 2 heard what I said about this, so you -- Mr. Lauth, do you have
 3 anything that --

4 MR. LAUTH: I do, and, hopefully, it will be
 5 constructive again.

6 THE COURT: Ask Mr. Spinelli if you want to really
 7 ask the question. Go ahead.

8 MR. LAUTH: One of the things I put a marker down
 9 on, and I called about month, maybe a month and a half ago

10 THE COURT: Uh-oh.

11 MR. LAUTH: -- is an attempt to try and streamline
 12 this process.

13 What defendants need is who out of the 800 pages of
 14 witnesses are you going to use at trial. Who are you going to
 15 respond to my MSJ on? What -- I have a perfect scenario out
 16 of CVLO 1/2(b). It's the Frankenberger case. They had no
 17 I.D., going into our MSJ with any specificity. We filed our
 18 MSJ, and in response they pick a guy out of this list, and he
 19 comes up with a product that had nothing to do with what we
 20 had, you know, in our mind as what the exposure was going to
 21 be at the close of discovery.

22 So you talk about surprise. My client just wants to
 23 know who you going to call at trial --

24 THE COURT: Has that -- has that motion been ruled
 25 upon yet?

1 MR. LAUTH: No. It's still in the briefing stage,
 2 and we've replied -- I think it's fully briefed at this point,
 3 but, you know, that's what we're trying to prevent. We -- I
 4 mean that's -- and that's how the rubber is going to hit the
 5 road with the 800 pages. We're going to file dispositive
 6 motions. They're going to come up with people that we didn't
 7 depose because it's a stack of 800 people -- or 800 pages, and
 8 say, "Well, you should have asked this guy this question."

9 THE COURT: I assume you've reviewed other opinions
 10 of Judge Robreno where that kind of issue has arisen.

11 MR. LAUTH: I agree, but it's still very costly for
 12 us to have to comply with that as the mechanism for operation
 13 of these cases. I mean that's a huge burden on our -- our
 14 clients times hundreds of cases if that's how we're going to
 15 proceed. And so what I -- you know, what I suggested several
 16 weeks ago is that perhaps we insert a deadline or come up with
 17 some kind of mechanism to say, "All right, plaintiffs, who are
 18 you going to use, really, in this case? Don't give me 800
 19 pages, give me eight people." And those are the people we
 20 need to be concentrating on working on, and then it devolved
 21 into the, "Well, we got site workers I.D.", and that type of
 22 stuff, which, you know, I question in -- in a lot of respects
 23 how that helps them on summary judgment, as well.

24 But, you know, maybe we try and narrow it down that
 25 way, get rid of the 800 pages, and let's focus and narrow down

1 on who you're actually going to use. It's the same thing that
 2 happened in Unsecker with the hundreds of co-workers
 3 supplemented at the end of discovery. It's those types of
 4 things that we're trying to avoid because, you know, what
 5 we're looking for is preparing these cases for trial.

6 THE COURT: Mr. Cascino, you want to respond, or,
 7 Mr. McCoy, you want to respond?

8 MR. MCCOY: Yes, Judge, again --

9 MR. CASCINO: I think part of the problem, Your
 10 Honor, and Mr. McCoy can respond, but part of the problem is
 11 that the discovery schedule that the Court has put us on is
 12 virtually impossible.

13 I think those were the comments that were made by
 14 Judge Giles, that if we were to be in this, that it was
 15 virtually impossible. I think the case law in the Third
 16 Circuit's on our side, the plaintiffs' side, in that matter.
 17 This is overwhelming what this Court is requiring us to do
 18 when there was 20 years that this Court did not allow
 19 discovery to occur.

20 THE COURT: All right. Well, that's -- I mean I
 21 understand that you've articulated that position one way or
 22 another previously, and I understand that, and I -- whether
 23 you've preserved it and are prepared to take any action on it
 24 upstairs, you know, is up to you, but I'm working with the
 25 cards that I'm dealt with as of this point.

1 MR. MCCOY: Judge, I'll -- I'll add further than
 2 that. Again, if we -- we know where the line is -- and I
 3 remember this call Mr. Lauth was talking about, and I think
 4 you've got -- or emails or whatever, there was going to be
 5 discussions with us and Mr. Lauth on this issue, and I think
 6 Your Honor had even said that as a result of one of the
 7 Wednesday conferences, but it got -- it got waylaid, I think,
 8 because then all the motions started coming in from all the
 9 other defendants.

10 THE COURT: I understand.

11 MR. MCCOY: They just -- there was -- there was --
 12 that's what I remember, just -- I remember these -- these
 13 conversations didn't happen. So they should, and -- and I say
 14 that because, again, yeah, we don't want to be just proposing
 15 lists just to meet the requirements of this, what we -- what
 16 we read interrogatory number 19 to say, site workers, because
 17 it's the same thing, it doesn't help anybody to be efficient
 18 in this litigation.

19 What we do want to be is to be is efficient, and we
 20 want to try to get in the -- we make sure that they've got the
 21 ability during the course of these -- of the work-up of all
 22 these witnesses and the testimony that's ongoing that
 23 something comes up that relates to one of these cases, we're
 24 going to move to supplement whatever it is that we disclose,
 25 and that way we can narrow our exposure. Whether that

1 supplementation is granted or not, I'm just saying I would
 2 expect that we would do that, somewhat like that Meyers v.
 3 Pennypack case we cited, or are we going to do it, I'm sure
 4 (inaudible) before trial no matter how late, but that's what I
 5 would expect, and then that way we could come with a narrower
 6 disclosure up front, providing that nobody comes back to us
 7 later and says, "You know, you didn't -- you didn't comply
 8 with the literal language of the rule, of, you know, of the
 9 interrogatory."

10 So we -- if that -- if that's what where we're at, I
 11 think that could be discussed in that -- all in that context.
 12 I'm -- I'm not hearing anything from the defense or from Your
 13 Honor that I have any -- less paper for the better.

14 THE COURT: Well, okay. I -- I'm not sure whether
 15 or not there's much more I can say. There are motions before
 16 me that relate to this particular topic. We will deal with
 17 the motions as we've dealt with these other motions. But I
 18 am -- I certainly echo what you said and what Mr. Lauth said,
 19 the importance of this, of particularizing, and it -- it seems
 20 to me it obviously just goes to the imperative of prioritizing
 21 those cases. Where you need to develop information, get the
 22 information as specifically as you can that you believe is
 23 going to support your position for settlement and defeat
 24 summary judgment and give them an opportunity to kick the
 25 tires. It's got -- it's got to be disclosed.

1 I mean the -- these interrogatories are a vehicle,
 2 and they wish to do it, and that's why they pressed it on
 3 the -- let's see, it's in the deposition protocol? I'm not
 4 sure I know what else to say about it than that.

5 Why don't we take a, say, a 10-minute comfort break.
 6 We have bathroom facilities both right straight through on the
 7 right-hand side if you know, but lesser known is if you go to
 8 your left and around the corner, there are bathroom facilities
 9 there, as well.

10 So we'll take 10 minutes and then come back and pick
 11 up.

12 (Recess taken, 11:03 to 11:35 a.m.)

13 THE COURT: Okay. Let's look at the scheduling
 14 order issues. Think we're on the second page or the back page
 15 if you don't -- Lauren's (phonetic) version of this which was
 16 more environmentally appropriate than my version.

17 And I guess I need to hear from Mr. McCoy about
 18 this, consolidating -- consolidating dispositive motion
 19 briefing, CVLO 1/2 through CVLO 4. All right. Jobsites. I'm
 20 not -- I'm not sure exactly what you're proposing and how they
 21 work and --

22 MR. MCCOY: Okay.

23 THE COURT: Give me some help on this -- this is
 24 what we sent around yesterday but apparently didn't get -- get
 25 to everybody until late yesterday.

1 THE COURT: Oh.
 2 MR. MCCOY: My apologies.
 3 THE COURT: Oh.
 4 MR. MCCOY: It's supposed to leave our office by
 5 1:00.

6 THE COURT: Just show me what you got --
 7 MS. STUDEBAKER: Here's --
 8 MR. MCCOY: This is --
 9 THE COURT: I don't think I have --
 10 MR. MCCOY: This it right here.
 11 MS. STUDEBAKER: There's a copy, too. Okay.
 12 MR. MCCOY: This -- this was -- this is our -- our
 13 proposed grouping right here, which is a --

14 THE COURT: Wait, wait, wait. Let me just check. I
 15 think I have it.

16 MR. MCCOY: I printed it out, so --
 17 THE COURT: That's another copy I got?
 18 MR. MCCOY: Yeah.
 19 THE COURT: All right. Okay.
 20 MR. MCCOY: So -- so that -- that's the proposed
 21 grouping by plaintiff name, and this was a -- the docket
 22 numbers, the -- right there, that -- so that was the
 23 qualitative analysis that our -- our firm spent -- well, I
 24 took awhile with this because we had to look and study about
 25 what jobsites these clients were likely to have accrued

1 evidence on, and at this juncture, needed from three and four
 2 groups and subgroup C, which is another group that our summary
 3 judgment (inaudible).

4 So we looked at these groups, and we qualitatively
 5 studied the jobsites that they were most strong at in their
 6 evidence, and when -- when the defendants that would match up,
 7 also, because they don't all have the same defendants in each
 8 case. We might have a good case against a defendant at a
 9 jobsite, but you don't have that defendant in a plaintiff's
 10 case.

11 So that -- that qualitative analysis was matching up
 12 all these factors, which took, I -- I would -- I would say a
 13 minimum, 20, 30 hours of staff time, and that's what we
 14 promised to do in that Monday -- I mean Tuesday conference, to
 15 complete that.

16 That's -- that is our best attempt at it as -- as of
 17 this moment, and it -- what it does is it breaks the cases
 18 down to the groups, seven groups of approximately -- can't
 19 really -- 20, 21 or something like that. Some of the groups
 20 have a little more, some of them have a little less, but
 21 it's -- the idea is to -- and so that when you look at this
 22 from a -- a summary judgment briefing perspective that you
 23 don't have to -- have to look at motions for all kinds of
 24 different jobsites, all scattered all over randomly throughout
 25 a state, but, instead, you look at certain cases which have

1 common jobsites, and I just take that first one as an example
 2 because it's easier just to explain the details.

3 So if you look at this Milwaukee area group --

4 THE COURT: Uh-huh.

5 MR. MCCOY: Okay. Oak Creek Power Station is the
 6 dominant site so they went on there for clients in that area
 7 in terms of total number of clients at this jobsite. This is
 8 a group of -- ends up being approximately 20 -- let's see, 22
 9 cases.

10 THE COURT: Okay.

11 MR. MCCOY: And a number of these clients have this
 12 Oak Creek Power Station as a -- as a site where we believe
 13 would be the primary evidence and a defendant that matches
 14 that evidence. So when those plaintiffs are listed over here
 15 on that third column in the chart, so there's many of the
 16 plaintiffs, and there's a group of 22 that are all Oak Creek
 17 Power Station.

18 And then those plaintiffs we would prepare what
 19 could be actually one brief about Oak Creek pertinent to all
 20 of the -- like, you know, here's how Oak Creek -- here's what
 21 happens at Oak Creek. It's a powerhouse. These are the
 22 activities that go on, and here's the brand of products that
 23 we know, turbines that are there. Here's the -- here's the
 24 companies that built whatever, of the eight units that there
 25 are at Oak Creek, and we would be able to state that generally

1 for Oak Creek.

2 So instead of having to worry about Oak Creek being
 3 in -- in the -- in one group that you're looking at now for
 4 summary judgment and then having to relearn about Oak Creek
 5 six months later, we've got most of our key Oak Creek cases
 6 right here, and --

7 THE COURT: So what -- what -- I guess what I --
 8 this is -- this is -- thank you. I think it may be helpful,
 9 and it may be something that we can -- we can work with, I
 10 don't know, but what is this -- what -- is this going to blow
 11 up all the current scheduling orders that we have?

12 MR. MCCOY: What I believe it will do, Judge, is --
 13 is to -- I'm just looking at the summary judgment applications
 14 right now. Okay. It -- it's the summary judgments in these
 15 cases as -- as if we -- as we got these set out or resolved,
 16 and then there's approximately 150 cases that are in this
 17 list, 150 to 160.

18 First off, individually, each case, I will -- I
 19 would guarantee, you can put good money on that, it will take
 20 about 30 percent of the time to actually decide these cases.

21 THE COURT: Let me -- let me interrupt you 'cause I
 22 think maybe you're not understanding my --

23 MR. MCCOY: Right, and then --

24 THE COURT: I'm not asking my question properly.

25 MR. MCCOY: I'm -- I'm --

1 THE COURT: Is -- my question's this. You've got
 2 these referenced in your -- the top thing, the CVLO group one,
 3 two, three, four. Do they correspond to our current list of
 4 CVLO cases? I mean --

5 MR. MCCOY: No, just -- these groups -- we put Roman
 6 numerals. These are -- these are new groupings. They're --
 7 but the cases are drawn from subgroup C, 3 and 4 groups that
 8 we currently have. So it will be the Roman numeral group
 9 numbered cases.

10 THE COURT: So how do you -- what's the relationship
 11 between the way you have these groups and what our current
 12 groupings are?

13 MR. MCCOY: Only -- the only relationship is that
 14 we've drawn clients from subgroup C one and the current groups
 15 three and four. That's the only relationship as these clients
 16 come from those subgroups.

17 THE COURT: Subgroup C and of -- of CVLO --

18 MR. MCCOY: One and two.

19 THE COURT: -- one and two.

20 MR. MCCOY: Right, and the current subgroups three
 21 and four.

22 THE COURT: Okay. Do you -- what are the -- what
 23 are the dispositive motion filing dates for those -- for those
 24 groups, which I think -- I think we're on now. Let's take a
 25 look at that and see what --

1 MS. STUDEBAKER: I have them, as well, Your Honor.

2 For subgroup C it's August the 6th.

3 THE COURT: Yeah. That's -- that's the initial
4 dispositive motion filing date.

5 MS. STUDEBAKER: Yes, sir.

6 THE COURT: Okay.

7 MS. STUDEBAKER: For CVLO 3 it's October the 8th.

8 THE COURT: Yeah.

9 MS. STUDEBAKER: And for CVLO 4 it's October the
10 29th.

11 THE COURT: What was group three again?

12 MS. STUDEBAKER: October 8th.

13 THE COURT: All right. And so group C in the one
14 and -- subgroup C and the one and two is August 6th.

15 MS. STUDEBAKER: Yes, sir.

16 THE COURT: Okay.

17 MR. McCLOY: So that --

18 THE COURT: When are you proposing that these
19 motions would be -- that the motions from your groupings would
20 be filed? Is that part of your proposal?

21 MR. McCLOY: That was in that letter we sent earlier,
22 and the way that worked is that these would be done at 30-day
23 intervals, each group, and from the time that the motions were
24 filed there -- there'd be a period of 28 days for them to
25 respond.

1 ss that what you're coming up with? Here's a cover letter.
2 Our unassigned.

3 And that -- that would be -- I think this is the
4 remaining group right here that could be an in-sub-group that
5 are unassigned. Let me just comment on that group briefly.

6 That last group that are unassigned, the reason that
7 they're unassigned is because we have so little information on
8 them that we can't really assign them qualitatively. So the
9 chances are with that group that there may be quite a few of
10 them that don't have evidence or they're involved in Indiana
11 sites that would be -- be able to be pursued, 'cause they're
12 all Indiana sites.

13 So the reason why that group remains unassigned is
14 those are the ones that are less likely that we have evidence.

15 THE COURT: So these are the ones that Mr. Setter's
16 been trying to convince you to dismiss, it sounds to me.

17 MR. McCLOY: Right. We'll keep dismissing bit by
18 bit, but we do it.

19 THE COURT: Okay. Right. Okay. Well, I -- I think
20 what I was -- you know, I appreciate you've done something
21 here. I think what I was -- wanted to see, also, was to put
22 what you've got together with what we now have. I mean we
23 have a structure, and we've been working off that structure,
24 and the structure is, you know, we -- we set it up -- frankly,
25 as I recall, we set it up largely following your leads.

1 The idea is the time frames, again, are to make it
2 less paper so you have more time to simplify, and you don't
3 restate what I commented before, I'm sure is -- is 80 percent
4 redundant statement summaries in the existing briefs, with the
5 idea that whatever has already been done and ruled on is, you
6 know, the objections and those arguments are all preserved and
7 carried forward, but you don't have to keep restating these.

8 THE COURT: Yeah.

9 MR. McCLOY: So it's a combination of efficiency in
10 terms of -- of what the cases are that are in the group, which
11 is what I call the qualitative portion of -- of the selected,
12 and -- and a combination of taking into account this is
13 already what's been ruled on and not restating it.

14 THE COURT: Yeah.

15 MR. McCLOY: We all live by that, but we preserved
16 our rights to object to it later on.

17 THE COURT: Yeah. By my count in what -- in our
18 groupings of subgroup C there are, I think, 37 cases, and CVLO
19 3, I believe there's about 50 cases, more or less, 50 cases.
20 And in CVLO 4 there's about 150 cases.

21 MR. McCLOY: Right.

22 THE COURT: So that -- that's a total of about 237
23 cases.

24 MR. McCLOY: Some cases are unassigned, and we
25 actually have a cover letter on that, about 50 cases, which --

1 That's my recollection. And I thought at the time maybe if I,
2 you know, we were -- we were front-loading on serious medical
3 conditions, and I think we got most of the malignancies in
4 CVLO 1, I think, the top 10 in CVLO 1. I'm not sure about
5 that, but I think. Maybe some of the later cases that are
6 going to CVLO 7, there are some malignancies. That's my
7 general recollection.

8 And I'm -- I'm -- I mean I'm -- my instinct is
9 you've got to have a substantial reason to show why we need
10 to, you know, disrupt what we've now done. And this might --
11 this might be one. This might be one, but I want to look and
12 see how it relates to what we now have, and also, principally,
13 to demonstrate that it's not going to have a significant
14 impact on pushing our your dates beyond where they are. I'm
15 not saying they couldn't be pushed out to some extent, but
16 pushing our your dates beyond where they are.

17 So I guess the part that I'm seeing that you've not
18 done yet -- maybe you have, and I just don't -- I'm not
19 visualizing it correctly or I -- I got to get it down on a
20 piece of paper somehow, on what this would mean with respect
21 to regrouping in terms of discovery that's been ongoing,
22 regrouping in terms of -- in terms of, you know, the
23 experts -- expert stuff that we're doing in connection with
24 them. Does it impact upon the SAS procedure that we had
25 separately laid out, kind of on on a separate track? You

1 know, every time we make a change like that, there's often
 2 unintended consequences, and I'm just -- I'm concerned about
 3 that.

4 I applaud the concept, and I -- I guess I want some
 5 reaction if the defendants even got a chance to study this,
 6 but I do applaud the concept of trying to -- trying to do
 7 groupings in a way that has this geographical context, and I
 8 can understand how that might be helpful and, you know,
 9 helpful to us, right? But I'm just not -- I don't have
 10 enough -- I don't have enough here in my own head to be able
 11 to really appreciate how it's going to impact upon -- upon the
 12 defendants.

13 Did you get a chance to talk about this with -- with
 14 Ms. Studebaker or anybody on the --

15 MS. STUDEBAKER: We talked about it briefly. I had
 16 not seen the proposal. It obviously came when I was traveling
 17 here yesterday, and the concern that I raised with Mr. McCoy
 18 is the same concern that you are raising. I wanted to take a
 19 look at it and try to do the math on it and see how what he
 20 was proposing would impact the current deadlines that we have
 21 in place, and I just hadn't had the opportunity to do that
 22 yet.

23 THE COURT: Yeah, and I guess you've not -- you've
 24 not, either.

25 MR. McCLOY: No, Judge. You -- you're right. I mean

1 we have -- we have discussed this fully, and it might be
 2 something we could -- we could discuss amongst us a little
 3 more. I would say, you know, no impact on the SAS, in my
 4 opinion, that's for sure, and that -- that one needs to go.

5 And in terms of a general time frame when all these
 6 cases are going to get done and not impose a very long
 7 extension at the end either, because, again, if we focus our
 8 efforts on a jobsite, we, as attorneys and as Judges, can --
 9 can in the same amount of hours do a lot more than we can if
 10 we look at the jobsites.

11 So that -- I say that because of -- that's the whole
 12 concept. Now --

13 THE COURT: I wish we had thought about that a year
 14 and a half ago.

15 MS. STUDEBAKER: Yeah.

16 MR. McCLOY: Well, I think -- Judge, I think it's
 17 consistent, you know, as you --

18 THE COURT: Maybe you said --

19 MR. McCLOY: -- said from the beginning of time we've
 20 talked about consolidating -- consolidating these things.

21 THE COURT: Yeah.

22 MR. McCLOY: Sometimes you -- we all know we go
 23 along -- I think that's --

24 THE COURT: You're on a what?

25 MR. McCLOY: I said we all know that we go along in

1 life, and I won't say any more than that.

2 And, you know, I -- so -- and that's true for
 3 everybody. So the -- but the -- but the -- at the end of
 4 these cases it's just my -- certainly what I've seen already.
 5 I mean what's left to decide, really? There's nothing
 6 (inaudible) business left to decide. We -- you could -- if
 7 you can in one paragraph say what everybody else in this case
 8 is about, and it would already have been ruled on. I mean the
 9 guy's either a bystander or turbine, and it's been ruled on,
 10 or he -- he's got a one-day exposure to GB joint compound
 11 products, and it's been ruled on.

12 THE COURT: Yeah.

13 MR. McCLOY: I mean it -- it's --

14 THE COURT: Let me ask you about --

15 MR. McCLOY: There's really nothing left to decide,
 16 other than to lay out the issues, and parties could almost
 17 agree on the rulings.

18 THE COURT: Let me ask you about this. You've
 19 got -- you've got down here in your groupings both plaintiffs,
 20 and you also have a separate column for elderly site workers.
 21 I guess are you meaning to say the column of elderly site
 22 workers, those are going to be co-workers who you believe
 23 would have evidence to offer that would impact upon the case
 24 of those particular -- those particular plaintiffs, as to
 25 those particular products?

1 MR. McCLOY: Yes, that's the --

2 THE COURT: That's -- that's exactly what we were
 3 talking about earlier, I would think --

4 MS. CHENEVERT: Uh-huh.

5 THE COURT: -- as a substantial step in the right
 6 direction.

7 MR. McCLOY: Yes. It all ties into providing data in
 8 the way that saves everybody time and organizing the
 9 depositions so everybody, you know, doing 303 depositions in
 10 the same day. That way we don't have to go through these --
 11 I'll use the depositions in other -- some of these depositions
 12 are each time a guy comes in, it's a new jobsite, and
 13 oftentimes there are new attorneys present, and we go through
 14 the same whole litany about, well, a turbine's built this way
 15 and is built -- the same turbine that, you know, Unified at
 16 Oak Creek built the same way, and the same people remember
 17 being there, and --

18 THE COURT: Yeah.

19 MR. McCLOY: -- how many witnesses do you need to
 20 keep saying that? So -- but the -- when you spread them out,
 21 that's what happens.

22 THE COURT: Ms. Chenevert, if Mr. Drumke was here,
 23 what would he say?

24 MS. CHENEVERT: Well, I think important like --
 25 trying to make these cases more efficient is certainly

1 understandable, but it sounds like this would be moving away
 2 from individualized case-specific analysis, and if I'm
 3 understanding Mr. McCoy correctly and talking more, just
 4 general site worker testimony about these work sites
 5 generally, and, you know, we talked about multiple times on
 6 the Wednesday conference calls, the need to still treat these
 7 cases as individual cases.

8 And so I'm not totally certain that it's true that
 9 we could have one brief that would deal with all of, you know,
 10 Oak Creek Power Station necessarily.

11 THE COURT: Is that what you're saying? I didn't
 12 hear that's what you were saying.

13 MR. MCCOY: No, I was -- I was saying that -- that
 14 there's a lot of generalities about Oak Creek Power Station
 15 that could be stated once, but -- but, certainly, the
 16 individual plaintiffs have to be proved case -- case by case,
 17 and that -- that section would be contained. Whether one
 18 brief or 20 briefs, it would be a section-briefed plaintiff as
 19 to their specifics, not --

20 THE COURT: David.

21 MR. SETTER: I just have a pragmatic question, and
 22 that's this. On these various individuals, for example, Mr.
 23 Aftler, he's one, two, three, four, five -- maybe six
 24 jobsites.

25 THE COURT: Right.

1 MR. SETTER: So I -- you know, I don't know. How do
 2 we proceed discovery? We're going to proceed with discovery
 3 in Allis-Chalmers with Mr. Aftler, then we're going to bring
 4 him back another day about the Briggs & Stratton case is -- or
 5 work site, then the Oak Creek Power. I mean that just seems
 6 like we're multiplying this, rather than consolidating it
 7 because you're now splitting them by jobsite, and anybody that
 8 works in multiple jobsites are going to have to show up
 9 multiple times in multiple depositions.

10 THE COURT: No, we're not going to have that.

11 MR. SETTER: I mean that's -- I don't -- I'm
 12 pragmatic. I don't know how this is going to work.

13 THE COURT: What about that?

14 MR. MCCOY: Yeah, and what you're saying -- what
 15 you're saying's right. The plaintiffs don't want to -- so
 16 that's the idea, is -- is if we have time to fit in all of
 17 what a particular witness knows in terms of the number of
 18 jobsites in a given day, that's -- that's the way we would
 19 prefer to have it happen.

20 I mean normally the plaintiffs' exam on any witness
 21 for a jobsite runs anywhere from 25 minutes to an hour.
 22 That's about what we run. The cross-examination, obviously,
 23 from defendants goes up to keep it longer, but, you know, if
 24 we could fit in a guy talking about his three jobsites, and
 25 he's familiar with -- some of these guys are -- are good

1 for -- are good for five to 10 jobsites, and that -- and
 2 that's the whole point, is don't keep bringing them back
 3 like --

4 THE COURT: So that's what you've been doing now,
 5 right? You -- you depose a plaintiff. He talks about his
 6 exposure wherever it would happen to be.

7 MR. SETTER: Right, which is --

8 THE COURT: So why would that have to --

9 MR. SETTER: Well, I was just --

10 THE COURT: It's not going to change.

11 MR. SETTER: Yeah. Well, I just assume we're not
 12 going to go into the circumstance that today we're only
 13 dealing with the Oak Creek Power Station, individual
 14 plaintiffs and co-workers, and then next week we got to come
 15 back and deal with Port Washington --

16 THE COURT: I certainly agree with -- I certainly
 17 agree with that.

18 MR. SETTER: And I just want to make sure that we're
 19 not doing that. So if we go in there, it's going to be if
 20 this guy is -- first time he shows up, Mr. Aftler is Allis-
 21 Chalmers, then we're going to have to take him on everything
 22 that he's listed here in terms of all the defendants and all
 23 the work sites. I mean that has to be built into that
 24 process; otherwise, it wouldn't work. Same with plaintiffs.

25 MR. MCCOY: Most of the plaintiffs are dead. We're

1 really talking about the site workers. But another -- another
 2 example --

3 THE COURT: I assume you got multiple site -- site
 4 workers that are -- multiple jobsites.

5 MR. MCCOY: Right.

6 MR. SETTER: Well --

7 MR. MCCOY: Another advantage to this -- this
 8 breakdown, using the Milwaukee area as example, is, okay,
 9 here's five of the Wisconsin electric power companies'
 10 stations on this list. That's -- that's -- the exposure, of
 11 course, is that companies' stations and the practices and
 12 procedures of that company will be focused on in this group so
 13 you don't have to keep restating, "Here's how Wisconsin
 14 Electric Power conducts its business," and you found the issue
 15 like affirmative defenses of the employer's at fault, and you
 16 can consolidate all those types of issues for briefing
 17 purposes, only have to state them one time about this is
 18 what -- this is why the electric -- Wisconsin Electric should
 19 be blamed for these exposures, not somebody else. That would
 20 just be stated one time, and we can do discovery on these
 21 sites in this group.

22 MR. SETTER: I guess what I'm confused about is
 23 there's one thing in terms of practical application of doing
 24 the depositions of site workers for plaintiffs, and then the
 25 other issue is the utility in terms of doing the -- from a

1 briefing standpoint for summary judgment. I guess that's what
 2 you're trying to -- I'm not really clear what this change --

3 MR. MCCOY: I think that the utility should be for
 4 both, and that's what -- what it is, but at the end of the day
 5 what -- we can organize it well, and I, as I said, that we're
 6 qualitatively organized, then the time you need to write
 7 briefs and read briefs and write opinions, as well as the time
 8 needed to actually get the evidence on record, is all
 9 dramatically reduced. That's why I said they used 30 percent
 10 of the effort.

11 MR. SETTER: So these go maybe in flights or
 12 substations from the current scheduling orders or some way
 13 or --

14 THE COURT: I don't know.

15 MR. MCCOY: The --

16 THE COURT: What do you say, flights?

17 MR. SETTER: Yeah. Different flights, we're now
 18 taking off from different flights.

19 MR. MCCOY: Yes.

20 THE COURT: I'm not quite sure I --

21 MR. SETTER: We're on group two, flight one.

22 MR. MCCOY: It's like sub-groups A, B --

23 THE COURT: Yeah.

24 MR. MCCOY: A, B, C. It's the same thing, yeah,
 25 it's --

1 THE COURT: I like that flights, though, that's
 2 good.

3 MR. LAUTH: As long as "fancy" is not included in
 4 the same sentence, that's fine.

5 THE COURT: You can't use "fancy" and "flight"
 6 together?

7 MR. LAUTH: No, "flight of fancy."

8 MR. FONSTAD: I'm still a bit confused. These are
 9 still individual cases --

10 THE COURT: Yes.

11 MR. FONSTAD: -- that have to be treated as an
 12 individual basis. So -- so if -- if Oak Creek, and I'm -- I'm
 13 assuming this is accurate, I don't know if it's 100 percent,
 14 but if Mr. Anhnert was an electrician there and someone else
 15 working on turbine there --

16 MR. CASCINO: He was a steamfitter.

17 MR. FONSTAD: I'm sorry. Thanks, Mike.

18 But regardless, different people have different jobs
 19 and worked at the jobsites at different times. They worked
 20 there under the direction of different subcontractors or -- so
 21 I'm not quite seeing that there are great efficiencies,
 22 because we need to build the record in an -- in an individual
 23 case.

24 So if a witness is only being put up in the Anhnert
 25 case, for example, we need to ask our questions, you know, to

1 establish, you know, control, et cetera, in that context of
 2 that case because we can't use a deposition taken in a
 3 different case to prove something in Anhnert.

4 So we need to establish our record in an individual
 5 case, and we need to deal with the causation and what is up
 6 with that plaintiff that -- so I understand generally that
 7 there might be efficiencies to talking about the same jobsite
 8 multiple times so we all, you know, can insert the same
 9 general single paragraph in our briefs saying this is the Oak
 10 Creek Powerhouse, but I think --

11 THE COURT: Well, let's -- let's break --

12 MR. FONSTAD: -- we can add some --

13 THE COURT: Let's break this out, because I,
 14 frankly, think this might -- if this has utility, it might
 15 have more utility with respect to the discovery process and
 16 the deposition process than the summary judgment process,
 17 which will kind of evolve on its own. But I'm just looking
 18 at, and I don't see this so much with respect to the -- to the
 19 group one, but if you look at group two, there's Illinois
 20 Industrial.

21 I mean you could -- if you -- this might -- this
 22 goes to a topic that we talked about earlier about the elderly
 23 site workers' depositions. If you go to -- like I'm looking,
 24 for example, just sticks out at me like the -- if you look at
 25 the elderly site witness -- site workers, one, two, three,

1 four -- the fifth column down, I see Robert Elrod there in
 2 that box. I see Robert Elrod appearing below in Joliet
 3 Generating Station. So there's Mr. Elrod, who -- and I'm
 4 going to -- you know, I accept -- I guess this is what -- this
 5 is the kind of thing we were asking the plaintiffs to do.

6 Mr. Elrod presumably would be a witness to establish
 7 causation with respect to the five witnesses at the Dresden
 8 Power Plant, who are all individual plaintiffs, two of whom
 9 are also alleged exposure at the Joliet Generating Station,
 10 and when you take -- you would notice Mr. Elrod's deposition
 11 and you would ask him about those five particular plaintiffs,
 12 and you've got over here in this next column all the various
 13 potential defendants who would then be the subject of the
 14 notice and would appear and would ask their questions of that
 15 witness with respect to those plaintiff [sic], with respect to
 16 these products.

17 I mean it combines the three other things that we
 18 were trying to triangulate with in order to -- that looks to
 19 me, I'm not sure that's what you intended, but it looks to me
 20 like that could really enhance efficiency and solve some of
 21 the other problems that we were earlier discussing.

22 MR. FONSTAD: I think that -- and primary, there's
 23 one assumption and that's that Mr. Elrod actually could talk
 24 about -- was a co-worker of all five plaintiffs, who could
 25 identified products made by (inaudible), GE, you know,

1 every --

2 THE COURT: That would require more refinement.

3 MR. FONSTAD: Yes.

4 UNIDENTIFIED ATTORNEY: Yes.

5 MR. FONSTAD: So, and -- but I think that that
then --7 THE COURT: This is a lot more refinement than you
8 had -- than Ms. Studebaker had when she received 817 pages
9 with 20 -- 20 names or more on each page.10 MR. FONSTAD: No, that's definitely true, but I
11 don't -- I think that the more natural requirement is when a
12 dep notice is out, they list what defendants are at issue in
13 the notice, and the caption of the notice is in multiple
14 cases, and that's the typical way it's been proceeding. So I
15 don't -- I don't -- I'm not quite sure what this is adding.16 MR. McCLOY: I would add to what you -- what you're
17 saying. I'm agreeing 100 percent, so -- and that is the
18 deposition notice would state -- would add to it the products
19 or the defendants to be implicated and the jobsites that the
20 guy's going to talk about.21 MR. FONSTAD: Okay. So it's -- from this is it fair
22 for me to say, yes, Mr. Elrod can talk about Dresden, but I
23 don't know if he can talk about GE.24 MR. McCLOY: This chart doesn't tell us which --
25 which brands he can talk about, but our -- under information

1 we would -- we would put that in the notice.

2 MR. SETTER: But you would also be saying he's going
3 to talk about those five plaintiffs, as well as the other
4 plaintiffs that he's listed for LaSalle Nuclear, proposed nine
5 or eight plaintiff -- I mean the point is if you tie in --

6 THE COURT: Yeah.

7 MR. SETTER: -- the plaintiffs with the products and
8 the jobsites -- well, they're kind of doing that now, anyhow,
9 but we -- we haven't really --

10 THE COURT: Are you doing that now?

11 MR. FONSTAD: That's what we're doing now, Your
12 Honor, and what we're trying to get -- I mean back to what I
13 said the last time, I just need to know who they're going to
14 use at trial.

15 THE COURT: Yeah.

16 MR. FONSTAD: Who are they going to use in response
17 to my motion for summary judgment? Not 800; eight or five or
18 whatever. These guys, pick your guys in the elderly site
19 workers column that you think are going to offer testimony
20 about my client. Those are the ones I want to depose. I'm
21 glad they're -- they're further refining their search. I'm
22 not sure that it requires changing scheduling orders. They
23 just need to keep concentrating and keep refining who they're
24 going to use. We want to take the depos of the people they're
25 going to use.1 I don't want to get the guy like Frankenberger who
2 pops an affidavit on me on a product I've never seen before.3 THE COURT: That's your second time in making that
4 particular point. That should be enough.

5 MR. FONSTAD: Great.

6 THE COURT: I got it. I got it, and I completely
7 agree with you.

8 MR. FONSTAD: Okay.

9 THE COURT: I completely agree with you, and I -- I
10 think, you know, more importantly, Judge Robreno might very
11 well agree with you, but we'll see, and that has its
12 implications.13 So -- so you're saying -- so they're saying, at
14 least with respect to discovery, and I guess this goes back to
15 you, Bob, when you are noticing depositions of these co-
16 workers, site workers, co-workers, whatever, you've been doing
17 that for the last, you know, six, eight months or so or more,
18 right? You're doing that with respect to particular
19 plaintiffs, obviously, and you -- sometimes there are multiple
20 plaintiffs, and you're also identifying the defendants who
21 are -- that witness is going to be --22 MR. McCLOY: Right. What we haven't been providing,
23 except, I think, in the Jack Wetzler case we did, with which
24 jobsites that they're going to cover. That would be an
25 additional point --

1 THE COURT: All right.

2 MR. McCLOY: -- to make this -- to consolidate all
3 this --4 THE COURT: Well, I'm sure if they're not going to
5 object to that, it's not going to hurt, but I'm not -- okay.
6 So -- so what's -- so explain to me again with
7 respect to the impact upon the summary judgment scheduling
8 orders. I guess I'm hearing you say you -- do you believe,
9 for example, that what this would do would be, say, whatever
10 the date is for CVLO group one in the Milwaukee area, that
11 would mean that you would focus upon the depositions of
12 your -- of your site workers and -- and your plain -- those
13 plaintiffs, obviously, who may still be living and site
14 workers.15 You would emphasize your discovery with respect to
16 that, and then following upon that, the motion for summary
17 judgment with respect to that, and presumably none of the
18 people who are -- who are witnesses -- elderly site workers
19 aren't characterized as witnesses, possibly causation
20 witnesses is maybe the way they're being treated here now for
21 this plaintiffs [sic] -- none of them are going to appear in
22 CVL -- in your group Roman numeral two, your group Roman
23 numeral three, your group Roman numeral four, presumably, so
24 that the defendants don't have to worry about those witnesses
25 with respect to any information outside what is in your CVLO

1 group one, and then you're done with those witnesses. Those
 2 summary judgments proceed, and I -- I guess I could see how
 3 that could be more efficient.

4 What do you think, Danny? Don't give me your knee
 5 jerk reaction. Give me your real -- reflect that I'm talking
 6 about.

7 MR. MULHOLLAND: My real reflect in following that
 8 is you -- is you follow the procedure that's presently in
 9 place and do it right, then we're fine.

10 THE COURT: That's your reflective responsive, or is
 11 that your --

12 MR. MULHOLLAND: I've been listening to everything
 13 that's been said, and that is my reflective response.

14 I don't see -- clearly, they -- they could be more
 15 efficient, so let them knock themselves out and be more
 16 efficient. Nothing's -- nobody's holding them back.

17 MR. SETTER: I would just comment on this. Then you
 18 can get multiple summary judgments on the same person,
 19 presumably --

20 THE COURT: What do you mean?

21 MR. SETTER: Because of the way it's being phased
 22 in. If you're -- if you're staggering summary judgments based
 23 on jobsite and we do Mr. Harold Aftler summary judgment for
 24 Allis-Chalmers, and then he shows back up, you know, three
 25 weeks down, I don't know if they're altering the dates in

1 terms of motion dates or -- or what. I mean are we -- are we
 2 accelerating dates? In other words, if we have October 29th
 3 for one group, we can say, okay, now we got five site I.D.
 4 things, we're going to have to get summary judgments done
 5 before October 29th, maybe --

6 THE COURT: I don't know. We have a --

7 MR. MCCOY: There's only one -- only one --

8 MR. SETTER: I don't see the efficiency there.

9 MR. MCCOY: There's only one summary judgment
 10 briefing date deadline, brief, you know, so each plaintiff --
 11 yeah, each plaintiff falls in -- in the one group, and that's
 12 where all the summary judgment briefing occurs.

13 If there are -- if there are some jobsites, and
 14 there are some things that have jobsites in another brief,
 15 then those would have to be disposed of as part of the
 16 first -- as part of the ones you've -- that they're assigned
 17 to; however, what we're saying is that the qualitative
 18 perspective, the primary evidence for this plaintiff falls
 19 within this group, and you're probably not going to have too
 20 much coming from someplace else when you deal with this
 21 particular claim.

22 So I mean the situation now is that it's a free-for-
 23 all as to where -- as to where that evidence is coming from.
 24 Now we're making it so it's predominantly organized by GE.

25 (Transcriber change)

1 THE COURT: Well, is it a free-for-all? Or does it
 2 really rather follow upon those cases that you're -- you --
 3 you know, you have it within your power to -- to do the
 4 discovery on those cases that are in the group that you want
 5 emphasized. I mean, isn't that the way most of the discovery
 6 has gone?

7 MR. MCCOY: Well --

8 THE COURT: I mean, who knows in the depositions of
 9 the site workers?

10 MR. MCCOY: Yeah. I mean, we are -- we are noticing
 11 most of the site worker depositions, but -- but we can -- you
 12 know, we can notice one deposition for one plaintiff's case
 13 and get that done. And we have to worry about use of that and
 14 all the other cases that have objections to it on protocol and
 15 so on.

16 THE COURT: Yes, but you can -- but you can deal
 17 with that under the current protocol. I mean, I -- I guess
 18 I'm --

19 MR. MCCOY: No, I mean what -- what Your Honor said
 20 before about consolidating discovery, at least they're all --
 21 they're all tied together, if we deal with this based on what
 22 your witnesses know about job sites. And, if they know a
 23 plaintiff, obviously we would say they also know this one
 24 plaintiff, and I'll talk about this one plaintiff. And, all
 25 that plaintiff's discovery has to be done for them to talk

1 about it.

2 THE COURT: All right. I'll tell you what I -- I'll
 3 tell you what I'd like to do here.

4 MR. MCCOY: Yeah.

5 THE COURT: I'm not prepared to -- to direct or be
 6 any change on this, at least as of now. But I am -- I'm happy
 7 for you to flush this out a little bit more in terms of what
 8 it would look like with respect to impact upon particular
 9 scheduling orders. I guess as I learn a little bit more about
 10 what you have been doing and what options you've been
 11 exercising, and what seems to -- what I'm hearing, at least
 12 from what Mr. Mulholland and Mr. Setter suggest, seems to be
 13 working.

14 You're really not precluded from kind of doing what
 15 you're doing now. But I -- what I would ask is that -- Mr. --
 16 Mr. McCoy with -- maybe perhaps with Ms. Studebaker looking at
 17 this, to get together and try to talk through some of this.
 18 And, I would not be -- I would not object if Mr. Harris is
 19 going to continue to play some role. And, the inference I
 20 draw from him whispering in your right ear from time to time
 21 on this particular subject suggests to me that maybe he's
 22 giving you some input on this. And, I have no objection, if
 23 nobody else does, in having Ms. Studebaker consult Mr. Harris
 24 about this if you're too busy to do it, and try to see if it
 25 really is going to make a difference.

1 I mean, it -- it appeals to me at one level. Maybe
 2 because I'm seeing a little more organization than what I've
 3 seen before. But I -- I hear what the defendants are saying,
 4 but they're not quite sure it really represents a significant
 5 change. And, the -- you know, the -- the fallback position is
 6 going to be, we're not going to mess with the scheduling
 7 order. They were set up. They've been in place for -- you
 8 know, at least since April and earlier. I'm not going to mess
 9 with the scheduling orders unless we can be convinced that
 10 there's a -- you know, a real legitimate reason to make a
 11 change. And, I'm hearing enough now that says to me there
 12 might be some question about that.

13 So -- but, you know, there's a start. And, so let's
 14 make this something that -- I don't know if you'll get a
 15 chance to have any conversation between now and next
 16 Wednesday. We'll have this being an agenda item on our
 17 Wednesday call next week and maybe the following week, and
 18 then we'll see whether or not anything further can be done.
 19 That's as far as -- I can't take it any further than that.
 20 But you know my general proposition. It's if you're going to
 21 do something that's going to push back the ultimate deadlines,
 22 if you're going to do something that's going to cause a whole
 23 lot more motions for summary judgment becoming right at one
 24 time, as opposed to them being relatively staggered, we're not
 25 going to be very responsive to it.

1 So you got to have it spread like we've had it.

2 And, I think I have heard you suggest you still have a spread
 3 when the motions become fully ripe. And, I think if you moved
 4 it back a little bit, I'm not going to get too upset. But not
 5 -- no substantial move back or -- this is -- this is not --
 6 I'm not going to see this as the Trojan horse that's going to
 7 try to get you some more time on discovery. It's not likely
 8 to happen from my perspective. Maybe a little bit. But
 9 that's kind of what my general views are about.

10 MR. MCCOY: How are you if we close off discovery
 11 (inaudible) within 30 days and then the briefing start as
 12 quick as possible after that?

13 THE COURT: Yes. All right. Well, that might --
 14 MR. MCCOY: I mean --

15 THE COURT: -- that might work. And, that might not
 16 be too disruptive. Because that -- that's probably going to
 17 accelerate discovery on a number of these matters. But then
 18 when you do that, what do you do with respect to the -- to the
 19 expert? You know, what do you do with respect to your -- I
 20 mean, it's -- that's -- it all impacts that. And, you guys
 21 got to work through that if you're going to make that change.

22 So I'm kind of disinclined because I just think
 23 there's unintended consequences. Some of which have been
 24 discussed here, and some of which being truly unintended and
 25 maybe not expected, haven't even really been articulated, it

1 seems to me. But I don't know. But I -- I'm grateful that
 2 you've -- you know, I think that -- I think that there could
 3 be something here. That's all -- I'll give you that. And --
 4 but, you know, whether it's already in place or not --
 5 defendants say it is. All right. Maybe a lot of it is. So,
 6 anyway, that's -- I like to try to give you some definitive
 7 inclinations on it, and this one is -- you got a, you know,
 8 fairly substantial inclination that you've got to show me a
 9 little bit more in terms of the impact upon the regulars here.

10 I think your next item, which is the business about
 11 the conferences after summary judgment rulings on these cases.
 12 I'm not -- I'm really not quite sure what you mean about that
 13 and what it is that we're supposed to do. I mean, if there's
 14 a ruling, there's a ruling. The Judge enters a ruling,
 15 lawyers go figure out what they think it all means. And, I'm
 16 not so sure what -- what is it we're supposed to do?

17 MR. CASCINO: Your Honor --

18 THE COURT: Mr. Cascino, is this your -- is this
 19 your item?

20 MR. CASCINO: I guess so. I -- I don't know where
 21 this actually -- where this would -- I'm not sure where it
 22 came from, but --

23 THE COURT: If nobody wants to claim it, why don't
 24 we just --

25 MR. CASCINO: But -- but I think -- I think --

1 THE COURT: Maybe Mr. Vaughan snuck it in there.

2 UNIDENTIFIED COUNSEL: It wasn't specifically -- it
 3 wasn't specifically listed as an item in our agenda, but it --
 4 THE COURT: Oh.

5 UNIDENTIFIED COUNSEL: -- it came evidently from
 6 our --

7 THE COURT: It was in one of your letters.

8 UNIDENTIFIED COUNSEL: Okay. So -- so --

9 THE COURT: You can blame it on --

10 UNIDENTIFIED COUNSEL: I'm looking -- I'm looking at
 11 it.

12 UNIDENTIFIED COUNSEL: What the issue --

13 UNIDENTIFIED COUNSEL: I might as well.

14 MR. CASCINO: What -- what the issue is, is this.

15 After the case -- after the case is finished with summary
 16 judgment, the rule -- they are immediately sent back to the --
 17 to the original district. What we would propose is -- and
 18 what Judge Robreno previously had in some of his scheduling
 19 orders is there would be a settlement conference.

20 THE COURT: Yes. I think that was in some of mine,
 21 too. Look, let me tell you how we're going to do that. And,
 22 I -- and I can't -- I think some of my -- I don't remember, to
 23 be honest, whether my scheduling orders say anything about
 24 conferences after that. I think what they say is that at any
 25 time anybody thinks it's productive, and particularly both

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1 parties agree for conferences, we'll make ourselves available.
 2 You know, if not me personally, the other Magistrate Judges
 3 who have been working on these cases, we'll find a Magistrate
 4 Judge to give you time within a reasonable period of time
 5 after the dispositive motion.

6 But what we're going to do is going to require you
 7 to ask for them in a particular case. And, there has to be an
 8 indication between the plaintiffs and the defendants that both
 9 parties think it's reasonable to have a settlement conference.
 10 What -- what we're not going to do, and I know you don't want
 11 to do, is waste our time driving people in here when -- you
 12 know, from your perspective, Mike, if the defendants don't
 13 want to pay full value and the cases from your perspective
 14 were what you could get out of it, you know, it doesn't --
 15 doesn't work.

16 I'd like to think -- you know, and what -- what
 17 concerns me is that, you know, the hammer you have of a trial
 18 date is obviously the most effective thing towards getting
 19 cases settled. The hammer of a remand date is a bit
 20 amorphous. You know, because I don't know, frankly, we've
 21 gotten commitments from the Courts generally that they're
 22 prepared to get these cases tried reasonably quickly.

23 I don't know what you're actually finding or what
 24 you guys expect. You know more about local procedures, but
 25 we've been led to believe through the Judicial Conference that

1 there will be Judges made available to get these cases tried
 2 promptly after remand. I'm not quite sure how they're going
 3 to do that in Central Illinois where they only have one Judge
 4 and two retired Judges but they're going to pluck -- they're
 5 going to pluck a senior Judge from someplace and let him spend
 6 a summer in Chicago.

7 MR. CASCINO: Fair enough.

8 THE COURT: Maybe.

9 MR. CASCINO: So far -- and that brings up an issue.
 10 There have been two cases that have been remanded. One has a
 11 trial date in October. The other one there's been at least a
 12 telephone conference on. There's a scheduled conference
 13 coming up on that case. On that case the defendants are
 14 claiming that they're not -- they're not ready for trial. So
 15 we have to start the process all over again. And --

16 THE COURT: And, what have you said to the Trial
 17 Judge?

18 MR. MCCOY: I was on that call. And, Mike is
 19 summarizing fairly accurately.

20 THE COURT: Which case is that?

21 MR. MCCOY: It was the perception I -- I had. They
 22 decided not -- not --

23 THE COURT: Which -- which case is it, Bob?

24 MR. MCCOY: It's the Bushmaker case.

25 And --

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1 THE COURT: Who's on it? Anybody over here on it?

2 MR. MCCOY: Rapid American and Chesterton both had
 3 counsel on the phone.

4 THE COURT: Okay. Anybody from Rapid American or
 5 Chesterton here?

6 MR. CINSILLA: I'm here from Chesterton. Your
 7 Honor, I was not on that call.

8 THE COURT: Do you know what he's talking about?

9 MR. CINSILLA: I know that there was a scheduling
 10 call. I know that they talked about an appropriate trial
 11 date.

12 THE COURT: All right. What -- what's your name,
 13 sir?

14 MR. CINSILLA: Jason Cinsilla, Your Honor.

15 THE COURT: Jason Cinsilla, can you leave your card
 16 for our ESR reporter here now, so we can get your last name
 17 spelled properly?

18 MR. CINSILLA: I did put my name on the sign-in
 19 sheet.

20 THE COURT: Okay. Good.

21 MR. MCCOY: But it's during that call -- it wasn't
 22 of record, but there's an order issued reflecting the -- that
 23 we made things of record, and there's a due date of July 20th
 24 for the submission of the parties, and another hearing on July
 25. But having said that, Judge, that the tone of the

1 conference was essentially that's -- from a defense, and said
 2 that discovery was to be continued needs to be continued, and
 3 that Daubert hearings need to be held on experts. And, that
 4 these issues haven't been resolved through the MDL --

5 THE COURT: Have not been resolved?

6 MR. MCCOY: Have not been resolved. And there's
 7 other things that need to be decided. And, I -- my comment to
 8 the Magistrate Judge who -- Magistrate Judge Crocker there had
 9 gotten -- got the case by agreement was that maybe on July 13
 10 here there could be some clarification shed on that. I didn't
 11 guarantee them anything, but I just said maybe. And, I said
 12 that's why we submitted these papers.

13 If (inaudible) wants I can wait until July 20th to
 14 submit to a Judge. But that was essentially what happened in
 15 that conference. It went on for quite awhile. Maybe 45
 16 minutes to an hour, basically talking about the same kinds
 17 things you hear about whether it can be resolved or not
 18 resolved, or how is it going to be resolved.

19 THE COURT: Well, I -- look, I --

20 MR. MCCOY: That -- that was why we had an item
 21 about the need for clarity -- clarity and consistency for
 22 remand that was on our --

23 THE COURT: All right. I mean, I -- I'm happy to
 24 tell you what I know. And, it's not -- not that much. It's
 25 relatively minimal. And -- and what I understand -- and what

1 I understand is -- and as I think we've told you consistently,
 2 is that these cases are supposed to be trial ready when
 3 they're sent back to the transfer of Courts. That's the way
 4 -- I don't know all MDL's, but the first -- this is the first
 5 MDL I've worked on in a significant way. But I don't know if
 6 all MDL's are like that, but that's the way this one is
 7 supposed to be set up. It's supposed to be trial ready.
 8 Consolidation of discovery, do the discovery more efficiently,
 9 et cetera, et cetera, et cetera.

10 And, I would have thought there's some order
 11 someplace that says that but I don't know. I don't know what
 12 you can tell Judge Crocker, but that's -- that's my
 13 understanding of it. And, the place where we've now drawn a
 14 line, as you know, is if we're going to resolve dispositive
 15 motions, and we're going to resolve limines only if they have
 16 a case preclusive of fact, and they're articulated as motions
 17 for summary judgment. But we've issued kind of a blanket
 18 order saying we don't want any -- any sort of trial context
 19 limine motions. We don't want -- that's going to be for the
 20 transfer Judge to sort of manage the trial and deal with those
 21 kinds of questions. But that's my understanding, so I can't
 22 -- I can't comment. Mike, you're going to pop up. Like, I
 23 can hear --

24 MR. CASCINO: Your Honor, I'm so used to it. Can
 25 that be part of the orders in the future, trial ready?

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 1 issues came up about what happened in this other case that Mr.
 2 Patina is talking about is the Deon Wright case. When it got
 3 remanded back to -- I guess -- is it Central or Northern
 4 District --

5 UNIDENTIFIED COUNSEL: Northern.

6 MR. LAUTH: -- of Chicago? Northern. We got set
 7 for a hearing with the Court, and I've made my appearance
 8 here. My appearance in the case when it was in MDL 875 didn't
 9 make it back to the transfer to our court. And, so whoever
 10 was served was somebody that is no longer affiliated --
 11 apparently no longer affiliated. We never got notice of the
 12 hearing. And, some of these cases are decades old, as we all
 13 know. And, I don't even -- I've worked on my client's
 14 business for more than a decade and I don't even recognize
 15 some of the lawyers who still got stuck on the transfer
 16 report's service list.

17 So is there a way we can work that system? I don't
 18 know if it's an electronic or technical thing, but perhaps the
 19 service list could make its way back down to the transfer for
 20 our court as well. Because I didn't even get notice of it and
 21 the case got set for trial without me being there. So --

22 THE COURT: What happened?

23 MR. LAUTH: What's that?

24 THE COURT: What happened?

25 MR. LAUTH: It got set -- well, it got set for trial

1 THE COURT: That's a Judge Robreno question. It's
 2 beyond my pay grade.

3 MR. CASCINO: Can you bring that to Judge
 4 Robreno's --

5 THE COURT: Sure.

6 MR. CASCINO: -- attention?

7 THE COURT: Sure. It's my understanding what's
 8 supposed to happen but, you know, I don't tell Judge Crocker
 9 what to do, and he doesn't tell me what to do. So I'm just
 10 giving you the way I understand it. But it's -- you know, I
 11 hear you. I'll be glad to discuss it with Judge Robreno. But
 12 Judge Robreno's consistently, I think, told all of us -- you
 13 guys have been in sessions with him. We're going to try to
 14 resolve as many of these cases as we possibly can.

15 We'll even hold them after summary judgment for
 16 settlement if we think it's productive. Or you can go back to
 17 your transfer Courts and do settlement back there. It might
 18 be easier if we can do it there. Happy to get rid of you
 19 guys. It's fun for a long time, but it's getting a little
 20 old. So that's -- that's my answer.

21 MR. LAUTH: Your Honor, Richard Lauth. I can take
 22 one more issue off the agenda right now, if you'd like. It's
 23 exactly on point. That's remand issues, Section C, technical
 24 issues related to post-remand service. My understanding was
 25 that Judge Robreno wanted to know where issues -- technical

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 2 Patina is talking about is the Deon Wright case. When it got
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 18 know if it's an electronic or technical thing, but perhaps the
 19 service list could make its way back down to the transfer for
 20 our court as well. Because I didn't even get notice of it and
 21 the case got set for trial without me being there. So --

22 THE COURT: What happened?

23 MR. LAUTH: What's that?

24 THE COURT: What happened?

25 MR. LAUTH: It got set -- well, it got set for trial

1 without me being there, and I learned about it after the fact
 2 from somebody who was there.

3 THE COURT: So -- but it didn't get tried?

4 MR. LAUTH: No. You know what I mean, I'm just --
 5 I'd like to be there when the status conferences happen.

6 THE COURT: I don't know the answer to your
 7 question. Could there be a process? I'm sure there could be
 8 a process. It's probably the kind of thing you should take up
 9 with Mike Kunz, our clerk here.

10 UNIDENTIFIED COUNSEL: Mary Chase. Mary Chase.

11 THE COURT: Yes, Mary Chase, right.

12 MR. LAUTH: Yeah, that's -- that's the reason I'm
 13 not complaining to you for a remedy. I'm just bringing it to
 14 your attention, so you know that this is potentially
 15 happening. Because I don't want to --

16 THE COURT: Yes. We will -- we will bring it to the
 17 attention of the appropriate people, and we'll raise it with
 18 Judge Robreno in our next session with him. And, just prompt
 19 us not -- prompt us, say, next Wednesday. Not this Wednesday.
 20 You know, the next -- not -- give us about 10 days to -- to
 21 look at that. But, you know, it seems to me, you do get
 22 notice of a remand. I mean, it seems to me your failsafe is
 23 you're remanded back to that particular Court. You ought to
 24 check the Docket back in that particular Court and make sure
 25 you're on it. If you're not, get on it. I mean, that's

1 another way to deal with it.

2 MR. LAUTH: It all happened quickly. I agree, there
3 are ways -- and we have now procedures in place to account for
4 that, but I just want to make sure that everybody else in the
5 room who gets a case remanded is aware that this may be an
6 issue.

7 THE COURT: That's -- he's a very good liaison
8 counsel for that reason, all you guys sitting out there.

9 MR. LAUTH: You're on notice.

10 MR. CASCINO: The Court should be aware that A.W.
11 Chesterton at that hearing said the case was not trial ready
12 and they had to do all this other stuff.

13 THE COURT: Well, that's what we just heard. Now, I
14 don't -- I don't know. Maybe that guy didn't talk to the --
15 the A.W. Chesterton lawyers who were involved in the MDL. I
16 don't know.

17 MR. CINSILLA: Yeah, I don't know the specifics,
18 Your Honor. I believe the issue was we wanted an opportunity
19 to take a followup medical deposition of the plaintiff.

20 UNIDENTIFIED COUNSEL: That was not at all said at
21 the hearing.

22 UNIDENTIFIED COUNSEL: I'm sorry?

23 UNIDENTIFIED COUNSEL: That was not said.

24 THE COURT: All right. All right. That's -- that's
25 not really for this conference. All right.

1 MR. MCCOY: I think -- Judge, I -- I have a couple
2 more comments on 2-B.

3 THE COURT: Yes.

4 MR. MCCOY: Because --

5 THE COURT: And, 2-C, let's combine them together.

6 MR. MCCOY: Right. Well, what I saw in 2-B in the
7 most recent round of subgroup E files. And, subgroup A files.
8 There's just so much redundancy review arguments that have
9 already been resolved one time by Judge Robreno. And, it
10 would be very helpful, I would think, to have some sort of --
11 of a reference point for the index or whatever from those
12 rulings, we can all refer back to those if we have to restate
13 all of our arguments on those points.

14 I mean, that's a real -- there's just so much to
15 that paperwork that's been stated over and over on proximate
16 cause wisdom or statute imposed issues that have been
17 resolved. And, that -- that, I think, is -- that -- that will
18 only continue (inaudible) at least some reference for
19 everybody to be able to say, hey, I'm going to adopt the
20 arguments that we made and this ruling and --

21 THE COURT: Well, don't you just -- when you -- when
22 you file your papers, don't you just refer to the decisions
23 that were rendered that were favorable to your position and
24 just --

25 MR. MCCOY: We -- we do.

1 THE COURT: Well, then they do. I mean, isn't --

2 MR. MCCOY: But -- but is that sometimes people
3 don't remember? I mean, it's just -- it just isn't -- it just
4 seems to me as though -- as though everybody should be working
5 off the same page.

6 THE COURT: Let's move on to our next issue.

7 MR. MCCOY: All right. I say that -- I say -- I
8 don't want to say anymore, but I -- I think that's the -- 2B
9 is what I --

10 THE COURT: Well, I -- I don't see any verbiage
11 whatsoever for -- for the Court to be involved in having some
12 kind of conference to discuss what kind of issues have been
13 resolved. The issues that have been resolved have been
14 resolved. If they apply to other cases, that's for the
15 lawyers to argue about. That's what the lawyers are for.
16 We're supposed to deal with specific issues that have been
17 beat up to come to us on a particularized basis, not to hold
18 conferences to tell people to supply to that and that and the
19 other thing. It needs to -- an individualized sort of cases,
20 at least in my judgment.

21 So -- and I think similarly, with respect to semi-
22 monthly discovery conferences that have been talked about
23 here, I mean, I -- you know, a conference like this, I think
24 you've demonstrated to me, which is -- I think, has been a
25 useful exercise. And, you've gotten for me maybe some quotes

1 or guidance about certain things. You've gotten some hard
2 rulings on some things previously. And, you will get some
3 more hard rulings relatively soon. I think some of the
4 discussion that we've had has helped me in terms of -- in
5 terms of some of our -- some of the rulings on -- on motions
6 that -- that are fully briefed and we might be able to get out
7 a little more quickly than we would otherwise.

8 So that's been very -- that's been very helpful.
9 But I'm not -- you know, we'll hold -- we'll hold conferences
10 and settlement conferences when both lawyers want -- think
11 that's useful. But discovery conference is on a case-by-case
12 basis. And, I can't really say much more than that. I'm not
13 going to set up something where we do them every two weeks.
14 What's this business about deferring certain expert
15 depositions? Whose issue is that, and what's the question,
16 given where -- given where we've dealt with in the scheduling
17 order. I think the scheduling orders have time in there for
18 expert discovery, as I recall. Half the reports are filed.
19 So what's --

20 MR. MCCOY: They just came from (inaudible).

21 MR. LAUTH: Your Honor, this is something that Mr.
22 Casmere brought up and -- and me, to a certain extent. The
23 thought behind it is, for example, there are certain experts
24 who may be used at the time of trial like the client's
25 treating physician. And, I think Mr. Casmere had asked for a

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1 particular treating physician's depositions in the context of
 2 one of the specific cases. It's -- expert deadlines have
 3 recently -- or excuse me, discovery deadlines have recently
 4 closed out.

5 And, one of the thoughts that we -- we had to try
 6 and help the process get along, given that we have so much to
 7 do, is to perhaps postpone -- I don't know how to say this
 8 without stepping in it. I'm about to step in it though. The
 9 non-critical expert, it's not relevant to a dispositive
 10 motion. So, for example, if I'm going to try the Deon Wright
 11 case, you know, and we anticipate plaintiff putting up their
 12 treating physician, you know, only the people that are
 13 involved in the trial of the case really care what the treater
 14 has to say.

15 THE COURT: Yes.

16 MR. LAUTH: And, those are the types of
 17 depositions -- I was wondering if there might be a way we
 18 could get an agreement or a stipulation -- I don't know that
 19 it has to necessarily be addressed in your order. I don't
 20 know that it materially impacts the post-remand status of the
 21 case, because, you know, frankly, the Judge that gets the case
 22 on the transfer Court is probably going to have to take a
 23 month or two to get it actually worked into a calendar.

24 THE COURT: Yes.

25 MR. LAUTH: Perhaps there may be a -- a stipulation

1 that could be reached there for -- for experts that are not
 2 going to be the subject of a dispositive motion that -- well,
 3 both parties agree. Because, you know, plaintiffs are at this
 4 point actually not taking very many defendants' experts
 5 depositions right now. I suppose it -- as much as anything
 6 because they figure they know what they're going to say, and
 7 they're going to say cost or shoot from the hip at the time of
 8 trial. Maybe that's an agreement that we can all get in to
 9 stipulation that if you're in the case post-remand, and that's
 10 the time between remand and the trial set, the trial setting
 11 maybe we can work to make our own experts available one more
 12 time.

13 THE COURT: What do you think about that, Bob?

14 MR. MCCOY: I just think that that's -- that's an
 15 issue that would be part of the discussions that we're having
 16 about consolidating (inaudible) cases, simplify and
 17 streamline. And, I'm -- I'm not saying that there's anything
 18 wrong with that, I wanted to have it worked out, the overall
 19 context of things.

20 MR. WATSON: Your Honor, if I may. Brian Watson on
 21 behalf of Owens-Illinois. If I could provide some
 22 particularized detail on what's at issue here, is in the
 23 O'Keefe case, for example, plaintiffs disclosed two treating
 24 physicians who will purportedly provide medical causation and
 25 disclose them as non-retained experts. Owens Illinois noticed

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1 the depositions of those two witnesses.

2 At Mr. McCoy's request for those depositions were
 3 delayed. And, then delayed again. And, we fell outside of
 4 the expert discovery period. Recognizing our brother in the
 5 medical field have very limited schedules, and the rules
 6 obviously provide for medical physicians to be treated very
 7 different in terms of retained experts. What we saw as an
 8 opportunity was for a trial defendant, who is really going to
 9 be challenging the case post-remand, to evaluate the medical
 10 causation opinions of that treating physician, which will not
 11 necessarily arise under all context in discovery for all
 12 defendants.

13 THE COURT: Yes, I -- I'm not -- frankly, I'm not
 14 sure I understand your comment. I'm trying delve back into
 15 the other question. Because under whatever scheduling order,
 16 even if we change them, there's going to be a period of time
 17 for expert depositions. That's -- that's clear. And, I --
 18 and I -- I, frankly, think that the suggestion that you
 19 gentlemen have made makes sense to me.

20 And, I would think it would be something that the
 21 plaintiffs would also want. It extracts -- it extracts an
 22 element of something that may not be necessary if it's the
 23 kind of case that's gotten to that point, and it's got, you
 24 know, enough merit to defeat summary judgment, you have good
 25 medical evidence, maybe there's a greater likelihood the case

1 is going to get resolved.

2 And, I would agree with Mr. Lauth, there is
 3 certainly going to be some time period between the time when
 4 you get back to the transfer Court. I would -- I think that
 5 it's a -- I think it's a respectable idea. And, I think it's
 6 one that if the parties worked up by way of -- by way of a
 7 stipulation -- I mean, I think we have -- you know, we've
 8 already put orders out there, for example, that says that
 9 we're not going to resolve trial related motions in limine. I
 10 guess that could be subject to some interpretation but -- and
 11 I guess that could be interpreted differently by a different
 12 Judge back in the transfer court.

13 But to the extent they're guided by our rulings --
 14 or at least they're -- I guess they're bound by our rulings.
 15 Our rulings are the law of the case. They're bound by those
 16 rulings. I -- I would do something like that. I mean, if you
 17 guys wanted to work up a stipulation with respect to that, I
 18 would do something like that. You might want to try to set it
 19 a little bit more in terms of parameters. But obviously the
 20 -- I can see the treaters being different. That's a good
 21 example. I can see them really being different.

22 MR. MCCOY: We will work out the language on that.
 23 THE COURT: Mr. Cascino is trying to get your
 24 attention. No, maybe not so much. Okay. So -- Yes. Good.
 25 I mean, do that. I think that makes -- I think that makes

1 sense. All right. But make -- make sure, as I'm sure you
 2 guys will, that gets on our Wednesday agenda. So check in to
 3 see what the progress is on that.

4 I'm -- I see it's, you know, getting 12:30ish or so.
 5 I want to stay and finish this. Does anybody have any
 6 objection to that? I think we're pretty close to the end of
 7 this, and get you guys out of here. Although, actually the
 8 next issue on the remand question with respect to Sadek
 9 Schonfeld and Anderson, it does have some complications. This
 10 is -- this was a position that I was convinced back in the
 11 fall that we'd take the track that we did. We're down that
 12 track. You're -- you're well on that track as of this point.

13 I'm not going to secondguess whether it was a good
 14 idea at the time or not. But I can see that there are
 15 complications to it that, frankly, I had not completely
 16 thought -- thought through. And, I don't know if you guys did
 17 or not, but they're now upon us. And, we are trying to do our
 18 best to deal with them. So as you can see, consistent with
 19 the notion as we put in our last order that was entered on
 20 June 22nd or 29th, or whatever it was, that we -- we are going
 21 to require that if somebody wants to join in the -- when was
 22 the motion filing date, August something?

23 UNIDENTIFIED COUNSEL: Yeah, August 10th.

24 THE COURT: Anybody anticipate that they will be
 25 joining in the challenge that is being mounted, as it were, by

1 made to be an attractive proposition.

2 And, I understand from all the discovery that's
 3 been going on, this has been very hotly fought and very hotly
 4 contested. I'm now hearing that -- that maybe it's not going
 5 to have the broad impact that I had initially thought. And,
 6 that because the plaintiffs will and they presumably have the
 7 right under the scheduling orders to provide information with
 8 respect to expert designations and using treating physicians
 9 and others to be able to establish a connection independent of
 10 Dr. Schonfeld or Dr. Anderson. Although presumably
 11 information from Dr. Sadek and Anderson and Schonfeld might be
 12 part of or used by another treater or another expert, even if
 13 those witnesses do not testify directly. And, that has
 14 further implications.

15 So what I'm -- what I want to sort out with you all,
 16 have some, frankly -- hopefully very frank discussion about is
 17 what we think about where this is going, and what we think
 18 about how we're going to -- to handle it with respect to the
 19 -- with respect to those cases that are remaining and such
 20 other connecting medical evidence. It, also, I think,
 21 implicates some of the AO-12 rulings. And, I know that the
 22 defendants -- or may implicate the AO-12 rulings.
 23 Some of the defendants have been now more shyly asking me
 24 about when they're going to get resolutions of AO-12 rulings.
 25 Which I shyly suggest to Judge Robreno or his -- his law

1 -- by counsel for Georgia-Pacific and others, with respect to
 2 Schonfeld, Sadek and Anderson, needs to provide notice to us
 3 that they will be joining in that motion when filed if those
 4 folks have motion for summary judgment that are ripe and now
 5 need to be filed. And, the reason for that is because Judge
 6 Robreno quite -- quite correctly, in my view, is not going to
 7 look at summary judgment motions in a piecemeal fashion. It's
 8 not efficient to do. And, even more so geometrically in an
 9 MDL type setting. So he will not then rule upon any motions
 10 for summary judgment if that notice is filed until such time
 11 as that issue -- the Sadek, Anderson, Schonfeld issue, is --
 12 is resolved.

13 Now, what is unclear to me, and I want to get
 14 clarity with effectiveness -- I don't know if there is -- if
 15 it's possible in getting clarity on this, but it is -- it was
 16 my understanding, and I think that there were representations
 17 made to this effect by the parties, at least I understood them
 18 to be made, that -- that if the motions -- if the plaintiffs
 19 -- if the defendants prevail on those motions, that that would
 20 effectively result in a loss of the ability on the part of the
 21 plaintiffs to establish any connecting evidence between
 22 medical condition and -- and the asbestos -- establishment of
 23 asbestos exposure. And, it would, you know, have an impact of
 24 eliminating many, many, many cases. And, that most of those
 25 cases were the cases that were non-malignancies. And, it was

1 clerks that -- you know, where is that in the file. And, I'm
 2 told it's all being done in due course, as of course that's
 3 happening. So I don't know who wants to go first on this.

4 MR. MCCOY: Judge, I have some data.

5 THE COURT: You have charts for me?

6 MR. MCCOY: I have some data. We -- I have some
 7 data. We promised you some -- actually I think we came up
 8 with more than I thought I -- I had promised. So -- but this
 9 -- this chart begins with the (inaudible). Here's some copies
 10 of it for everybody. And, without having to read it all,
 11 Judge, right now, I will say that what it shows -- what it
 12 shows is that -- as I understand it from our office, because I
 13 -- I'm not the one who's handling this data. The people who
 14 are doing but I --

15 THE COURT: By the way -- by the way, that -- that
 16 explanation is meaningless to me.

17 MR. MCCOY: Right. I understand.

18 THE COURT: You're here speaking for all this, so
 19 you're the guy.

20 MR. MCCOY: Right. I'm just -- I'm just telling you
 21 that -- don't ask me too many questions on it, but there's 203
 22 clients who -- who I understand who are also a part of AO-12
 23 challenges. And, that -- of that group, 67 percent have
 24 mountable support from the treaters of the underlying asbestos
 25 related disease. And, that's what this chart shows. So if

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1 the -- based on this chart, 65 cases are -- are at risk, with
 2 one-third of the cases roughly for the rulings on the
 3 Schonfeld side (inaudible).

4 MR. SETTER: If I can comment, Your Honor?

5 THE COURT: Just one -- yes, certainly I'm going to
 6 give you every chance to comment, Mr. Setter.

7 MR. MCCOY: This is --

8 THE COURT: Just so -- just so I understand this,
 9 the -- the big tall one at the -- on the far left, 37 percent,
 10 76, that represents what? You're saying --

11 MR. MCCOY: The bilateral underlying --

12 THE COURT: Speak.

13 MR. MCCOY: -- in the treater directors.

14 THE COURT: All right. So that means you believe
 15 there's a treating physician who would be designated by you as
 16 an expert to establish that the cause of the injuries to this
 17 particular plaintiff or death of this particular plaintiff is
 18 the asbestos exposure?

19 MR. MCCOY: Yes.

20 THE COURT: Oh.

21 MR. MCCOY: Or that our experts are relying on
 22 records generated by that treating physician that say that.

23 THE COURT: Okay.

24 MR. SETTER: If I may, Judge, with -- with respect
 25 to this issue, because I want to address the question that you

1 had about the effect of the -- the Daubert motion and hearing.
 2 But with respect to this particular issue, it's really
 3 irrelevant from this standpoint. The AO-12 motions of about
 4 203 cases have been fully briefed and had been at issue since
 5 the end of March, where Judge Robreno accepted our reply brief
 6 on March 31st. The AO-12 motion is on the basis what was
 7 submitted pursuant to AO-12 and amended AO-12.

8 THE COURT: Right.

9 MR. SETTER: -- regardless if there was a treater
 10 record or not. If there were treater record, it should have
 11 been part of AO-12, but they weren't. That's kind of tough in
 12 terms of the entire ruling. And, I guess my point is that
 13 this really doesn't help resolve the issue, because if the AO-
 14 12 motion were granted, the case was disposed of on the basis
 15 of the administrative order number 12 not being complied with,
 16 as opposed to the supplementation.

17 Mr. McCoy and Mr. Cascino have had the opportunity
 18 -- in fact, they explicitly requested to supplement the AO-12
 19 issues with respect to some of these materials that we're
 20 talking about. And, I don't think Judge Robreno would want
 21 them together, honestly. But I don't think that --

22 THE COURT: Your understanding is that that request
 23 is still -- that's an outstanding request?

24 MR. SETTER: I think it's part of the response
 25 saying we would like --

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1 THE COURT: Do you know why? Do you know?

2 MR. MCCOY: I don't -- I don't know where that
 3 stands, but I -- I don't know.

4 THE COURT: Nobody knows? Anybody out there know?

5 MR. MULHOLLAND: Based upon prior order --

6 THE COURT: Danny knows.

7 MR. MULHOLLAND: Based upon the prior order, it's
 8 part of their response --

9 THE COURT: Okay.

10 MR. SETTER: To our motion so we (inaudible) ruled
 11 upon.

12 THE COURT: So did you file a motion to strike it or
 13 something of that sort?

14 MR. SETTER: In our reply we said, you know, based
 15 upon your prior order in November, you didn't want it.

16 THE COURT: Yes. Okay.

17 MR. SETTER: Now, going to the other issue about the
 18 effect, the way the motion is going to be structured on the
 19 Schonfeld, Sadek and Anderson, it's going to be on these
 20 specific reports. These reports have basically four varieties
 21 of Schonfeld, Sadek and Anderson. They're going to be in non-
 22 malignant cases. And, some of those reports --

23 THE COURT: Going to be on what?

24 MR. SETTER: The non-malignant cases in large part.
 25 And, some of those reports do show up in some of the lung

1 cancer cases. And, if the ruling would be to strike those
 2 reports by the doctors, then I don't think they can be relied
 3 upon for that case by those witnesses certainly, or any other
 4 witnesses. However, I mean, if there's other evidence that
 5 they have and they're reserved, I assume that the case can
 6 still proceed. I mean, I --

7 THE COURT: Yes.

8 MR. SETTER: -- I don't think you can just say the
 9 case is disposed of. The witness is disposed of in terms of
 10 that report.

11 THE COURT: Yes. Yes, yes, yes, yes. But -- but I
 12 guess what I was trying to find out was whether or not -- and
 13 I think I've heard whether or not the plaintiffs anticipate
 14 that there will be other medical evidence that they believe
 15 would -- would fill the gap, would close the hole, if there is
 16 -- if there is a hole. And, I'm hearing Bob and Mike to say
 17 that in 76 cases there is other evidence, but in the remaining
 18 cases there's not.

19 MR. MCCOY: 138 there's -- there's evidence. Out of
 20 the 203, there is other evidence for 138.

21 THE COURT: 138 there's other evidence?

22 MR. MCCOY: Right.

23 THE COURT: Okay. So that means that leaves how
 24 many that are not.

25 MR. MCCOY: 65 right we right now can't find any

1 other evidence. Medical records are incomplete on a lot of
 2 people. That's where it's at right now.

3 MR. SETTER: But that's AO-12, not Daubert motion.

4 MR. MULHOLLAND: But even if it Daubert, that number
 5 is hotly contested.

6 THE COURT: What -- what number?

7 MR. MULHOLLAND: The -- well, his number of 138 of
 8 203. I don't think it's anywhere -- there may be some, but I
 9 don't think it's anywhere close to that. Then you have, if
 10 they're right, then you have to look at it against the
 11 backdrop of the AO-12 motions, there is no (inaudible) in
 12 that. But even so, at the end of the day we don't believe,
 13 and we think we will demonstrate to the Court when it's
 14 available on this issue if there's anything like 138 of 203 we
 15 have treaters.

16 THE COURT: Is that part of your motion -- going to
 17 be part of your motion? Your motion really just goes to the
 18 -- the liability and so forth of --

19 MR. MULHOLLAND: Schonfeld's diagnosis.

20 THE COURT: Yes.

21 MR. MULHOLLAND: Right.

22 THE COURT: So that won't be part of your motion.
 23 That's fine.

24 MR. MULHOLLAND: That issue does not have to be
 25 resolved as (inaudible).

1 MR. CASCINO: That was the issue that they brought
 2 up originally. You know, they got up and they said none of
 3 these folks are gonna have treaters that agree with what Dr.
 4 Schonfeld --

5 THE COURT: They -- they did say that. I mean, I
 6 recall that.

7 MR. CASCINO: -- nah, nah, nah, nah, nah.

8 THE COURT: I recall. I recall.

9 MR. LAUTH: But in terms of the dispositive motions
 10 and the potential hold on a remand, you know, that's the issue
 11 that we're going to be litigating once we figure out what
 12 happens with Schonfeld, Anderson and Sadek.

13 THE COURT: No, I understand. I understand. So
 14 you've got -- so then there will be -- there will be, you
 15 know, his number. There will be 138 other cases where they
 16 will have some medical evidence, and you believe that you will
 17 likely challenge the sufficiency of that medical evidence.
 18 That's -- essentially that's what I hear you say, Dan; is that
 19 right? Would that -- that would be a -- that would be an
 20 evenhanded way to say what it was that you articulated, right?

21 MR. MULHOLLAND: Well, one -- you're leaving out one
 22 thing. You have to look at it -- we are in a --

23 MR. MCCOY: Hotly contesting these or subject --

24 MR. MULHOLLAND: You done?

25 MR. MCCOY: Yeah.

1 THE COURT: Go ahead.

2 MR. MULHOLLAND: What we are looking at in the
 3 (inaudible). More than likely we think it's going to be a
 4 completely different (inaudible). And, of course, we'll wait.
 5 I assume Charlie is quietly waiting over there.

6 THE COURT: Okay. I hear you. That's -- I
 7 understand that's an implication. I know how those -- how the
 8 rulings and the motions consume us. Okay. I take it -- I
 9 mean, I've not heard anybody raising any objection, but I
 10 don't know what -- I think there was a -- there's actually a
 11 filing date -- oh, it was -- wasn't there a summary judgment
 12 motion filing date already this week?

13 MR. SETTER: Yes.

14 THE COURT: Have you -- have you heard anything with
 15 respect to whether or not any of the defendants are having
 16 difficulty with respect to filing these notices?

17 MR. SETTER: Actually I tracked that. It wasn't
 18 that difficult, it didn't seem to be, the number of folks that
 19 did it. One thing I would say is, just an observation, the
 20 observation was most of the cases only involve one or two
 21 defendants with which a summary judgment motion was even
 22 possible. A large part of these cases are going forward with
 23 summary judgment motions that are uncontested. And, that was
 24 the thing that I saw when giving notice. There's people
 25 calling me saying, "Well, it's an uncontested motion for

1 summary judgment, do I need to do this?". And, I said,
 2 "There's a Court order but I (inaudible)." I mean, if I were
 3 in a position where the motion for summary judgment was
 4 uncontested, I would take it and run, rather than --

5 THE COURT: Then you need to go back and read Rule
 6 56, which says that the Judge has to do an independent
 7 analysis and make a determination and can't grant a motion for
 8 a summary judgment simply because it's unopposed. We have to
 9 look at it and evaluate it.

10 MR. SETTER: Well, I understand. But in the end
 11 run, is it going to end up being a case remaining or not?

12 THE COURT: And, I hear you.

13 MR. SETTER: If you say it's to give the notice --

14 THE COURT: I hear you. And, I -- I understand.
 15 Obviously there's a substantial greater chance you'll get a
 16 summary judgment if it's unopposed.

17 MR. SETTER: But I -- I think from an observation
 18 standpoint of case management, a docket where we've seen a lot
 19 of cases we've seen where the motions for summary judgment are
 20 not being opposed. And, maybe there could be a mechanism
 21 involved, I don't know. In fact, you just cited earlier
 22 but --

23 THE COURT: Well, maybe --

24 MR. CASCINO: To do that physically -- I mean
 25 (inaudible) --

1 THE COURT: Maybe we should -- maybe --

2 MR. CASCINO: -- business decisions on cases. I
3 mean, you have to understand we're -- we're on a schedule that
4 we feel how we feel. And -- and we have to make decisions. I
5 have lawyers that are there -- that are there till 2:00 in the
6 morning sometimes on these summary judgment motions and that.
7 And we obviously take a case and -- better case -- medical
8 case or whatever are going to go first. Or the weaker cases
9 may go. And, we may not get -- be able to get through all of
10 the cases that our clients would have responses to.

11 THE COURT: So -- so are those cases where you are
12 prepared to agree to a dismissal orders?

13 MR. MCCOY: Yes.

14 MR. CASCINO: When they come to us and say yes,
15 yeah.

16 THE COURT: Okay.

17 MR. CASCINO: Yeah, I've had to budget --

18 MR. MCCOY: We're -- we're trying to -- we're trying
19 to be continually more efficiently towards that date of --
20 where defendants were likely to proceed against their net
21 cutoff date comes very close to the close of fact discovery.
22 And, sometimes even by that -- in that short interval, we
23 can't figure out one way or the other on some of those. But
24 we're trying to make that more accurate determination at that
25 stage. And, then -- and then even later on they do sometimes

1 get that information.

2 Part of it just has to do with the logistics of
3 who's where and simply, we really have a piece of the evidence
4 that we thought we were going to get but we didn't get at the
5 end of fact discovery. And, that's -- as soon as -- as soon
6 as we know these answers -- I'm trying to get it so people tell
7 you guys, because I -- I fully agree that we shouldn't be
8 having summary judgment re-filed if we can possibly get word
9 to them before that's due. You know, even halfway through the
10 -- the process we say people get time on attorney fees. So --

11 THE COURT: Well, okay. But I would -- but I --

12 MR. CASCINO: We can't guarantee that either, Your
13 Honor. I mean, we may not guarantee it.

14 THE COURT: Can't guarantee what?

15 MR. CASCINO: You know, after, you know, he files
16 his motions, we get on the phone and we say, okay, I'm just --
17 you know, we're not going to file responses to these, but it's
18 after the summary judgment they file their -- and, you know,
19 we -- we will try to be efficient and tell them ahead of time,
20 but we can't always do that.

21 THE COURT: All right. I'm going to -- okay. I
22 understand. I'm not -- I'm not in that fight now. But what I
23 would like to do -- what I would like to do is to ask Mr.
24 Setter, if you've got -- if you've got this to hand, to send
25 us a note, advise us of those cases where there are motions

1 for summary judgment which are unopposed -- and I heard CVLO
2 say today that they would agree to the dismissal of those
3 cases. And, predicated upon -- predicated upon that
4 representation that your identification of the documents, we
5 will -- I will pass it along to Judge Robreno, and presumably
6 he will enter a dismissal orders.

7 MR. MCCOY: Yes. And, on reading some of the
8 motions, sometimes we find that there is a piece of evidence
9 that they're pointing to that we don't have that we didn't
10 realize we didn't have.

11 THE COURT: Okay. All right.

12 MR. MCCOY: And, that could happen.

13 THE COURT: That's fine. That's -- I don't need to
14 get -- I don't need to get involved in the detail of it.

15 MR. MCCOY: Right.

16 THE COURT: Now, the question -- the further
17 question that we have concerns this. The -- the number of
18 cases that are where the discovery has been provided as part
19 of the SAS discovery that we've been talking about has been
20 dwindling down now. Is it like 30 something, Mr. Setter?

21 MR. SETTER: Yes.

22 THE COURT: 30 something?

23 MR. SETTER: 37.

24 THE COURT: 37 cases. Okay. So putting aside the
25 -- the issue of whether there are other -- other medical

1 evidence available that the plaintiffs believe they may have,
2 right, to support a causation if Sadek, Anderson, Schonfeld's
3 motion is granted, is it -- it was always my understanding
4 that the plaintiffs agreed that on these 65 cases where
5 there's no other medical cases, that the 38 who are not part
6 of the 37, the other -- the other half of them, were also
7 going to be dismissed. Is that correct or is that incorrect?

8 MR. CASCINO: I -- I do not believe that that's
9 correct. I believe every case has to be done on a case-by-
10 case basis when it comes about dismissal. However, you know,
11 if -- if it is apparent to us that it's the same piece of
12 evidence in -- in plaintiff A's case or, you know, plaintiff
13 B's case, then, you know, I'm sure we're going to make
14 accommodations and we're going to confer with the Court
15 because we can't fight every battle.

16 THE COURT: Yeah.

17 MR. CASCINO: So I don't -- I don't believe we've --
18 we've said that. The SAS idea was -- was theirs, not ours.

19 THE COURT: I -- you're right. You're absolutely
20 right. I understand.

21 MR. CASCINO: But again, all of the Daubert issues
22 pretty much are going to be a case-by-case basis.

23 THE COURT: Well, may -- I mean, at the end of the
24 day I think you're right. But it's been suggested to me
25 there's lots of patterns. And, that may well be demonstrated,

1 I don't know.

2 MR. CASCINO: Your Honor, there are -- there are.
3 We can look at them.

4 THE COURT: Let me -- let me ask you this. Do you
5 know the -- of the 38 cases that are not ones where they're in
6 the SAS discovery, do you know what -- what scheduling orders
7 those cases are in? Are any of them early scheduling orders?
8 Do you know that, Mr. Setter?

9 MR. SETTER: I don't believe they are.

10 UNIDENTIFIED COUNSEL: I think they're late.

11 THE COURT: They're late. They're late. So there's
12 been really no -- very little discovery, if any, with respect
13 to that.

14 UNIDENTIFIED COUNSEL: They're pretty much all
15 settled.

16 MS. STUDEBAKER: They're five, six and seven --

17 THE COURT: So it would be --

18 UNIDENTIFIED COUNSEL: (Inaudible) seven.

19 THE COURT: It would be -- is there anything that
20 can be done -- not to -- not to change the SAS scheduling
21 order at all, but is there anything that could be done to get
22 those cases, or at least some of those cases, for which the
23 kind of discovery that you've been obtaining from these folks
24 that concerns individual cases folded into the SAS case at
25 this point? Understanding you're only -- you're a month away

1 from filing your motion. You understand my question?

2 MR. SETTER: I don't.

3 THE COURT: You've got -- you got now apparently,
4 according to them -- the assumptions I make are this. There
5 are 65 cases which they say are dependent upon Sadek, Anderson
6 and Schonfeld, right? 37 of those cases are cases where
7 there's -- they're part of the SAS discovery, right? So
8 whatever you've done in terms of the discovery, you've got it
9 on those 37 cases. You don't have it on the other 38 cases.

10 The assumption I think you had, and convinced me was
11 a viable assumption, and they may or may not agree with, is
12 that if the motion is granted, which is based in part upon the
13 discovery from those 37 cases and all the other SAS discovery
14 that's been ongoing, if that was granted, that that would mean
15 that the 38 cases, the ones that were not part of the
16 discovery, would also have to fall.

17 Mr. Cascino says -- and I understand completely why
18 -- he's not going to agree to that right now. They got to be
19 looked at on a case-by-case basis and look at the reasons and
20 rationale for why the motion would be granted or not. And, my
21 question is, can that issue be avoided by getting some further
22 discovery on those 38 cases to be looked at by whatever your
23 evidence is going to be with respect to Sadek, Schonfeld and
24 Anderson?

25 MR. MULHOLLAND: Can you give us a second?

1 THE COURT: You guys talking to each other,
2 conferring, this is very good. Do you want to go out in the
3 hallway?

4 MR. MULHOLLAND: That's okay.

5 (Pause)

6 MR. SETTER: I don't think -- I think our -- our
7 position is, if we prevail on Schonfeld, Sadek and Anderson
8 based upon the reports that we are challenging as unreliable
9 on the 38, those reports go into the other cases that are
10 remaining. So the ruling should be consistent on the
11 standpoint that we have this time -- we have, I think, about
12 four or five patterns. And, this is the -- the same one that
13 we talked about in September in at least 10 cases, 15 cases.
14 Now, he may come back and say he's got additional evidence and
15 what have you.

16 THE COURT: Well, that's different.

17 MR. SETTER: But I think we say if it's been struck
18 here in terms of the short form report that Cascino Vaughan
19 prepared for Schonfeld, for Anderson, whatever our issue is,
20 and it doesn't stand in -- in the cases that we have before
21 you in September, why would it stand in the cases that remain
22 in October? And, I think that's our -- our position is that
23 it would not. And, then if there's a different pattern that
24 we will articulate as well.

25 For Anderson, it's the same thing. It's the same

1 report -- the same type of report. And, if it's found
2 unreliable in the 38 cases, it should be unreliable in the
3 cases --

4 THE COURT: It might depend -- but it might depend
5 if some of the determinations are made on -- on a very
6 individualized basis, not -- you know, I don't -- you know
7 what they are, I don't. But what -- you know, whatever these
8 reports are that -- some reports might be considered
9 sufficient, some might not be.

10 MR. SETTER: Right. Well, we're arguing that the
11 methodology employed in those three instances, those three
12 doctors in these reports is unreliable for various reasons.
13 And, that is consistent for any type of report that runs for
14 those doctors that have these matters.

15 THE COURT: And, you have a reasonable belief that
16 -- that the other 38 cases, the same types of reports were
17 used?

18 MR. SETTER: Yes. Based upon the AO-12's and --
19 that's -- we already have that information. In large part I
20 don't think we're of the same opinion.

21 THE COURT: Okay.

22 MR. SETTER: In fact, I'm pretty confident because
23 we (inaudible -- whispering).

24 (Pause)

25 MR. SETTER: Your Honor, if I may?

1 THE COURT: Yes.

2 MR. SETTER: On the -- as an example, on the motion
3 for their Cascino Vaughan's asbestos screening packets, we
4 noticed that in approximately 400 to 500 cases in which we had
5 the Anderson and Schonfeld -- what we call short-form reports.
6 And, so that's -- that's virtually the whole docket, except
7 for about 50 to 60 cases that do not involve Schonfeld and
8 Anderson doctors. So I think the point is, if we prevail on
9 our motion, those cases are probably going to be at issue in
10 terms of at least Schonfeld and Anderson, because they have
11 the same report.

12 THE COURT: When you say "those cases," you mean THE
13 COURT: 38?

14 MR. SETTER: No, the 400. If we win the 38, I think
15 the 400 are at jeopardy.

16 THE COURT: Well, that's -- well, how do you --

17 MR. SETTER: Well, not -- the case isn't in
18 jeopardy, but at least Schonfeld and Anderson's report in that
19 case.

20 THE COURT: Oh, you mean where the -- where the --
21 if -- well, yes. I mean, I think if the information that the
22 treaters or other rely upon comes from Sadek, Anderson and
23 Schonfeld, and that's been, you know, tainted or whatever,
24 yes, that will have to be looked at on a --

25 MR. SETTER: All right.

1 THE COURT: Right. I understand that.

2 MR. SETTER: Right. But I'm just trying to
3 illustrate that there's 400 cases where we have basically the
4 same type of report for Schonfeld and Anderson. And -- and
5 it's -- we are challenging the method on that and that's why
6 they're (inaudible) screening packet, so on and so forth, but
7 I don't want to get into that just yet.

8 THE COURT: Look, I'm not -- right, I'm not here to
9 argue this now. What I am here to do is to try to make sure
10 that the -- that there is a maximization that is reasonable
11 and sensible and fair to the plaintiffs as to how that ruling
12 would be utilized. And, I am not going to -- I'm not going to
13 -- you know, I'm not going to enter any kind of an order about
14 that in advance now. We don't -- I don't know.

15 I mean, I think Mr. Cascino is right, I don't know.
16 It's going to have to be -- we have to wait and see what
17 happens. And, what I'm trying to do is to see if there's a
18 way I can do anything now, so that I can eliminate the wait-
19 and-see-what-happens by having you incorporate into what
20 you're doing the information you have on these other -- at
21 least the other 38, you know, that they're saying might be
22 involved. And, maybe if you've got the documentation from the
23 AO-12's in those cases, if that's what you have, they get
24 folded in, that would be -- that would be helpful. But -- but
25 maybe not. I don't know enough about how your -- what your

1 approach is and how you're going to go about doing it to know.

2 I'm sure I'll -- hopefully it will all be clarified
3 for me in September when we get into the hearing. But that's
4 my -- that's my problem. What I don't want is to go through
5 all this, and we spend all this time and effort doing all
6 this, and it has limited impact.

7 MR. SETTER: I don't think it will. I mean --

8 THE COURT: Well, I know you've told me that, but
9 I'm trying to get myself -- I'm trying to get more comfortable
10 with the fact.

11 MR. SETTER: And, that's why I was trying to suggest
12 to you that this motion for these 400 cases we asked for
13 request for admissions about CVLO preparing the reports, the
14 reports, when they send me the names are virtually identical.

15 THE COURT: You guys never give up. That's great.
16 Go ahead.

17 MR. SETTER: They're virtually identical. I mean,
18 they do have specific information for that plaintiff, but the
19 report format in terms of what's collected and the methodology
20 is identical.

21 THE COURT: All right. Okay. Okay.

22 UNIDENTIFIED COUNSEL: I won't respond.

23 THE COURT: You disappoint me if you're not
24 responding. All right. I think that's probably all we need
25 to cover. Is it, Joel?

1 (Pause)

2 THE COURT: Well, Joel is reminding me that we
3 didn't talk about the -- frankly, I think I've got enough. I
4 mean, there's a -- there's a motion to quash the second
5 subpoena issued to Dr. Henry. I've got that in front of me.
6 I think I understand what the issues are on that. We just got
7 to get it written up. And, the production of the CVLO's
8 asbestos screening packet. This is a relatively newly filed
9 motion. I'm out of time. I do want to ask you, however,
10 about the GE motion with respect to the transcripts. And, I
11 -- I know that Mr. Lauth, I think -- I guess it was you, Mr.
12 Lauth -- filed a motion for reconsideration?

13 MR. LAUTH: No, that's Westinghouse's guys.

14 UNIDENTIFIED COUNSEL: Yeah.

15 MR. LAUTH: The painter case with respect to
16 production of transcripts.

17 THE COURT: Westinghouse's motion. But that's you.

18 MR. LAUTH: No, that's me. You've got the wrong
19 guy. He's not Westinghouse, he's GE.

20 THE COURT: I'm -- I'm going to do that, I'm sure,
21 for the next year. So that was your motion for
22 reconsideration?

23 MR. LAUTH: Yes, Your Honor.

24 THE COURT: Can you tell me, have you -- have you
25 guys -- do you have anything from Cascino Vaughan? Because

1 you remember that order talked about --

2 MR. LAUTH: It required --

3 THE COURT: That order indicated that you were to
4 get information from Cascino Vaughan.

5 MR. LAUTH: I think the deadline on that's today. I
6 don't know that I've seen it, but I've been with you in the
7 interim.

8 MR. CASCINO: My understanding is that the court
9 reporter is supposed to have to our office by 2:00 in the
10 afternoon. And, my secretary, I told her that she has to stay
11 there until she gets to me tonight.

12 THE COURT: Okay.

13 MR. CASCINO: And, she said she will get it done by
14 5:00.

15 THE COURT: And, what about -- what about your own
16 -- your own document? One of the things that was raised was
17 that you guys also have or should have these transcripts.

18 MR. CASCINO: It's all being -- it's all being done
19 exactly word-for-word of what Your Honor wanted in the order.

20 THE COURT: Good. Okay.

21 MR. CASCINO: Your Honor, with regard to the --

22 THE COURT: But all I -- all I do want to say about
23 that, before you leave that topic, is that I'm -- I'm going to
24 look at your motions as whether or not it meets the
25 qualifications for reconsideration or not. I don't know. I

1 haven't looked at it rigorously. But I want to look at that
2 in connection with what happens here.

3 MR. CASCINO: Okay.

4 THE COURT: In my judgment, that impacts burden. I
5 did that a lot, as you know, on the burden analysis. And,
6 that impacts burden. And, I take your points, which I think
7 you've already made. But nonetheless, I take your points.
8 But I -- it's going to be dependant upon that. So your motion
9 is filed. And, you might want to look at that motion and
10 whether you want to adjust anything in your -- not change your
11 position. I don't care, you do whatever you feel you need to
12 do for your client. But -- but it -- it may very well be
13 impacted. And, I would expect you to address the question of
14 whether it is impacted by what you get from Pullman or what
15 you get from Cascino Vaughan.

16 MR. LAUTH: Okay.

17 THE COURT: Now, maybe I'm -- I think you probably
18 think it doesn't make any difference because if -- if you're
19 looking for a needle in a haystack, it doesn't make a
20 difference if you're looking for 20 needles or 2 needles, you
21 still got to go through the whole haystack. But that's your
22 basic position. You know, that's -- that's not going to
23 change. But --

24 MR. LAUTH: Certainly, if what they tell me is they
25 don't need anything as they can get it all from a more

1 convenient and available source, I am glad for that to be the
2 answer. And, I'll be glad to take a look at --

3 THE COURT: Yes, but that -- but that -- that
4 further reduces the burden of my ruling.

5 MR. LAUTH: Well, then there won't be anything left.
6 And, there will be no burden.

7 THE COURT: Okay.

8 MR. CASCINO: Your Honor, on the issue of the
9 defendant's motion to quash Dr. Henry, may I have leave to
10 file a three-page surrebuttal? There are some facts that I
11 was going to argue today that the Court should have -- should
12 be aware of before he rules on -- on that motion. So if I
13 could have leave to file just a three-page surreply, I'd
14 appreciate it.

15 THE COURT: How about if I give you five minutes
16 right now?

17 MR. CASCINO: That's fine, too.

18 THE COURT: Go ahead. I didn't -- I didn't say too.
19 I meant -- I meant, you know, one or the other. Either/or.

20 MR. CASCINO: Oh, I --

21 THE COURT: Well, let's take it one step at a time.
22 Just tell me what your -- tell me what it was that you want to
23 add, and we'll see whether or not I think you --

24 MR. CASCINO: All right.

25 THE COURT: -- ought to give it to you.

1 UNIDENTIFIED COUNSEL: Tough decision.

2 MR. CASCINO: All documents concerning Dr. Henry in
3 Chemrisk. We did not receive any of the documents concerning
4 the McElroy (phonetic) case, which was a case that he did the
5 same type of study with Chemrisk a year earlier. We did not
6 get those documents, and that's why we requested them.

7 THE COURT: Were they -- was that requested back in
8 the summer when I entered -- I think I entered an order in
9 August of some date, if I recall correctly.

10 MR. CASCINO: It was requested in our -- you know,
11 by our subpoena. And, I don't believe -- I don't know -- I
12 don't remember the order to be honest.

13 THE COURT: Well, that's pretty important, because
14 basically what they're saying is that -- I've already ruled on
15 a lot of this, and I -- I know I've -- I'm not sure about that
16 particular point, but I know I -- I did -- I covered a lot of
17 these -- well -- issues previously.

18 MR. CASCINO: And -- and we're at a different stage
19 of the litigation at this point. I mean, I find out about
20 this and, you know, we would like -- I don't believe in
21 discovery, to be honest about it.

22 Secondly, Your Honor, with regard to all B read
23 control films done by Dr. R.T., L.S. and J.P., they're
24 responses that Dr. Henry does not have those. But that's not,
25 in fact, what he testified. He said, I don't actually -- "I

1 don't know actually where they went. I don't remember. All I
 2 have is just a composition of testimony. I don't have all of
 3 the individual records." And, it is our position, Your
 4 Honor --

5 THE COURT: What were you reading from?

6 MR. CASCINO: Dr. Henry's deposition.

7 THE COURT: Okay.

8 MR. CASCINO: He does not say definitively he does
 9 not have those documents. He does not say he does not have
 10 access to those documents either because they were part of
 11 this R. Grace study (phonetic) that -- that he did conduct.
 12 And, what I need, Judge, is simply one thing. There's three B
 13 readers that have their initials. And, they read control
 14 films. I want to know how they read those control films.
 15 Because in the case of Dr. Schonfeld, when -- when we look at
 16 the control films, we see that those doctors that were hired
 17 by the defense underread the control films. And, we'd like to
 18 have the same opportunity to look at that with regard to Dr.
 19 Anderson.

20 And, Dr. Anderson has requested that -- that we look
 21 at that because that will tell us if these people underread or
 22 they don't underread. And -- and so it's important that we
 23 get the control films from these three doctors that are known
 24 by their initials, and that Dr. Henry does have access to
 25 those documents, I do believe. He's the author of the study.

1 He does not say definitively that he does not have these
 2 documents. And -- and that's the testimony that I read to
 3 you. So it's important that we get those documents.

4 The third point I want to make with regard to this
 5 is that the other requests that we make go to the issue of
 6 money. How much money that Dr. Henry made from the defendants
 7 in this litigation. Dr. Henry only remembers one company that
 8 may have hired him out of 114 law firms that are before this
 9 Court. The law firms have those records, and the attorneys
 10 have information, especially in asbestos litigation. And,
 11 they're obligated to provide that information back, because
 12 Dr. Henry has been doing this litigation, doing B reads for
 13 years and years and years. And, for him to claim, well, I
 14 only remember McGuire Woods asking, you know, me to do
 15 business. Well, we want to know how much money he's made.

16 THE COURT: Well, but -- but you're taking it
 17 another step by -- by trying to get it from the law firms.
 18 What I -- what I was operating under, frankly, was -- I think
 19 you saw, is a 26(b)(2). I think it's (b)(2) -- which is that
 20 part of Rule 26 that talks about what needs to be provided
 21 with an expert report, what you're entitled to. And, I
 22 understand the position about he's not really an expert in the
 23 same sense, or someone took that position. But I'm treating
 24 him essentially that way, which -- which, to me, appropriately
 25 guides the discovery. And, that was the principle basis upon

1 which I -- I rendered my decision before. I'm not likely to
 2 -- to change it, but I appreciate your argument.

3 And, now you want to give me a little -- if you want
 4 to give me a paper in a couple of days, I don't have any
 5 objection. Do you want to respond at all, Mr. Setter?

6 MR. SETTER: Just -- just briefly, Your Honor. Two
 7 things that I think jump out on this. One, your August 29th
 8 wasn't an order. We had a conference. The transcript is in
 9 the paper. And, here's what you ruled. You basically said he
 10 can get documents -- Mr. Cascino can get documents from Mr. --
 11 Dr. Henry concerning the Schonfeld study in this matter and
 12 the Grace matter as well.

13 Anything else he can make inquiry about, but the
 14 documents are limited to that, as well as any documentation
 15 about dealing with any defendant in this litigation, including
 16 Forman Perry, okay, the law firm. He produced on September --
 17 whatever it was, his deposition -- everything that he had
 18 concerning the Schonfeld study, everything that he had with
 19 respect to the Grace study. We got into the whole issue with
 20 Grace, if you recall, from the standpoint that Mr. Cascino had
 21 to go back to Grace and give get B reads (phonetic), which he
 22 did, concerning the Henry issue in Grace.

23 I don't know why he didn't get the control films.
 24 But he obviously has access to do it. Dr. Henry testified
 25 that he doesn't have it. If I need an affidavit saying that

1 he doesn't have it, he doesn't have -- he doesn't have those
 2 Grace documents anymore. They were turned over to Grace,
 3 they're part of the Grace bankruptcy. And, there would be big
 4 issues about the confidentiality as we went through this
 5 before.

6 THE COURT: Yes, I recall this.

7 MR. SETTER: And, then last, but not least, on the
 8 money issue, he said, look, I've worked for Forman Perry and
 9 I've worked for McGuire Woods. And, I think McGuire Woods is
 10 in the context of some Worker Comp. cases or whatever he said.
 11 And, he says, "I don't have anything, but I'll tell you how
 12 much Grace paid me. I'll tell you how much Forman Perry has
 13 paid me." And, I don't know if he -- if he went in to how
 14 much McGuire Woods paid him, but I thought he said, I've only
 15 been involved in three or four Worker Comp. cases doing some B
 16 reads. That's it. My point --

17 THE COURT: Did he provide information about how
 18 much revenue he's earned as a result of doing Forman Perry
 19 business?

20 MR. SETTER: Yes. Absolutely. He produced the
 21 invoices.

22 THE COURT: All right.

23 MR. CASCINO: Your Honor, he only produced them with
 24 regard to the Dr. Schonfeld study and with regard to the
 25 doctor in the R. Grace study. He did not provide any other

1 financial stuff with regard to Forman Perry.

2 MR. SETTER: But I think he told you about that. Go
3 read the transcript.

4 MR. CASCINO: I -- I am familiar with the
5 transcript. And, so, again --

6 THE COURT: All right. Well, have to go back and
7 take a look at the -- look at the transcript ourselves and --
8 and make a determination. But if you want to, you know, right
9 this up and clarify it for me and for folks here, that would
10 be good. And, if you could get it done by next Wednesday,
11 that would be very helpful.

12 MR. MULHOLLAND: Your Honor, may I -- on the
13 asbestos screening packet motion, we got their response during
14 dinner last night. Can we -- can we have till maybe Thursday
15 to submit a short reply?

16 THE COURT: Sure. You got that, Lauren? You give
17 it to him -- give him -- okay. Anybody in the general gallery
18 have any questions -- further questions or comments or
19 whatever? Okay. I have -- as far as I'm concerned, we're
20 adjourned. Does anybody have anything else?

21 UNIDENTIFIED COUNSEL: No.

22 THE COURT: Okay. Thank you very much.

23 ALL COUNSEL: Thank you, Your Honor.

24 (Proceedings concluded at 1:18 p.m.)

25

1 C E R T I F I C A T I O N

2
3 We, Josette Jones, Tara Martin, and Brenda
4 Boulden, court approved transcribers, certify that the
5 foregoing is a correct transcript from the official electronic
6 sound recording of the proceedings in the above-entitled
7 matter.

8
9
10 JOSETTE JONES

DATE

11
12
13 TARA MARTIN

DATE

14
15
16 BRENDA BOULDEN

DATE

17
18 DIANA DOMAN TRANSCRIBING